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STUDY ON DRINKING WATER LAW IN NEPAL

FOR THE
NATIONAL WATER COMMISSION
KATHMANDU, NEPAL
1990

FINAL REPORT

LEGAL RESEARCH ASSOCIATES (LEGRA)
KATHMANDU, NEPAL



STUDY ON
DRINKING WATER LAW IN
NEPAL

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STUDY ON DRINKING WATER LAW IN NEPAL

Terms of Reference for the National Consultant

1. Review the existing legal regime related to drinking water.
2. Identify areas requiring changes and improvements in the existing legal regime and prepare recommendations to effect such changes and improvements.
3. Recommendations shall include suggestions on the measures required to be undertaken in order to safeguard the user's rights of safe drinking water, to manage the safety of such water from the point of source to the user's end, and to provide for the punishments for misuse or leakage of such water.



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CHAPTER I

A Review of the Existing Legal Regime Related to Drinking Water

1. Introduction

Nepal occupies an area of 147,181 sq.km. The average rainfall in the country is around 1400 mm per year which is caused by the south-west monsoon. Out of the total precipitation on Nepal, 174 billion cubic metre per year goes as surface run-off from Nepal accounts for about 200 billion m³ per annum. Because of concentrated rainfall during monsoon period (June-September) about 72% of the total run-off goes as instantaneous flow and the rest is conserved as snow and groundwater which ultimately appears in the rivers during the dry season¹.

The population of Nepal is 15,022,839 which is sparsely spread into various parts of the country. In the Terai (the flat land) the concentration is 6,556,828 whereas in the midhills it is 7,163,115 and in the mountains it is 1,302,896².

Compared to the needs of the population, the water resources in general is quite sufficient. It is one of those countries of the world which have abundant water resources. However, the water resources, so far as drinking water is concerned, is dominated by many problems. The water actually received by consumers is not adequate (during the drought period), not easily accessible (required up to 3 hours per day of trekking

1. Nepal and its water resources, Water and Energy Commission Secretariat 1988.

2. Statistical Pocket Book, Nepal Central Bureau of Statistics, 1988.

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per family) and not safe³. Till the end of sixth plan around 22.4 percent population was covered by the drinking water sector comprising 17.9 percent of rural areas and 79.9 percent of the urban population⁴. However, the country aims at providing tap water to the whole of the population by the turn of the century. Hence, the task is enormous and the challenges are many.

To provide safe drinking water to the public in general is a social duty of the State. This duty imports several administrative and legislative responsibilities attached to this aspect. A simple execution of a project to construct and distribute drinking water does not solve the peripheral problems connected with it. Besides the protection of installations and facilities, it also involves the adjudication of competing rights of the people and maintenance of standard and quality of drinking water. The approach of this study shall be to focus mainly towards the legal aspects of the problem.

Throughout the history of Nepal, drinking water had never been a problem demanding the concerns of State to regulate it through legal measures. So, there does not exist any historical piece of written legislation on drinking water. Since ancient times, water for drinking purposes used to be availed and provided on traditional and customary manner. As the then Nepal, prior to the political unification during last quarter of Eighteenth Century, was politically scattered into numerous principalities, the geography of each of such

³. Water in Nepal, Dipak Gyawali, Occasional papers of the East-West Environment and Policy Institute 1989. paper No. 8. P.85.

⁴. National Planning Commission, Summary of the Seventh Plan Part I (English Version) June, 1985 P. 172.

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principalities was so small that drinking water could hardly be an administrative concern. Most of the hilly states were abound with rivers, rivulets and water spouts and drinking water was easily available to the people in its pure and pristine natural form. In some populous villages, the rulers or land-lords had constructed public water-taps through their religious motivation rather than on administrative expediency.

In some larger principalities, e.g. Gorkha and Kathmandu Valley, the names of the Kings like Ram Shah and Jaya Sthiti Malla, respectively, are recorded to be popular not only for making drinking water available to their subjects but also for introducing an orderly management systems thereof. However, in most parts of the country, the availability of drinking water was abundant in terms of demands, which indicates the absence of specific legislation on this aspect. Looking at the development of codification of laws in Nepal, which took place in 1853 A.D., no provision is found on the use of drinking water in this Code, i.e. Muluki Ain.

During those historical days, construction of water-taps or water-spouts was considered as a sacred religious duty and such token of charitable works are found in many parts of the country, specially in the urban areas. Early scriptures, e.g. stone-tablets, are found in such places containing the names of rulers and high nobles, who have ordered the construction. In those early days, Kathmandu city itself was, for the drinking water purposes, divided into three sectors - viz. Thahity, Maruhity and Kohity and the people living in the respective areas were abundantly served with water thorough big

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and small stone taps⁵. More such taps were added later with the growth of population and the traditional system continued in respect of drinking water only with addition of more public water-taps.

The initiation of modern type of water-taps drawing water from the source in cast-iron pipes was made during 1880s. However, private taps were not allowed except to the ruling Rana families. Still much later some private taps were allowed to non-Rana families with special permission from the Prime-Minister. After 1951, although such restrictions were largely removed, drinking water became gradually a scarce object due to the lack of development in increasing the collection of water at the source and distribution system. Permission for private taps were liberally granted by the new political regime, but without any assurance of water in them. Some notices were published in the Nepal Gazette during 1951 and 1952 restricting the distribution of water taps and misuse of water. Excepting for a few hours during morning and evening, drinking water through water pipes were largely unavailable to the general public throughout the country. This picture provides a glimpse of the state of affairs and the quantum of role which the legal regime could play herein.

The Canal Electricity and Related Water Resources Act, 2024 (CERWR Act) can be said to be the first attempt to introduce a specific legislation in the field of water resources. The Act incorporates the conceptions like licensing, payment of fees etc.; but unfortunately drinking water use has not been sufficiently covered in it and has still been left to the

⁵ According to the people's belief Kathmandu city was divided into three sectors for providing drinking water facilities to its inhabitants. The existing stone taps prove their belief.

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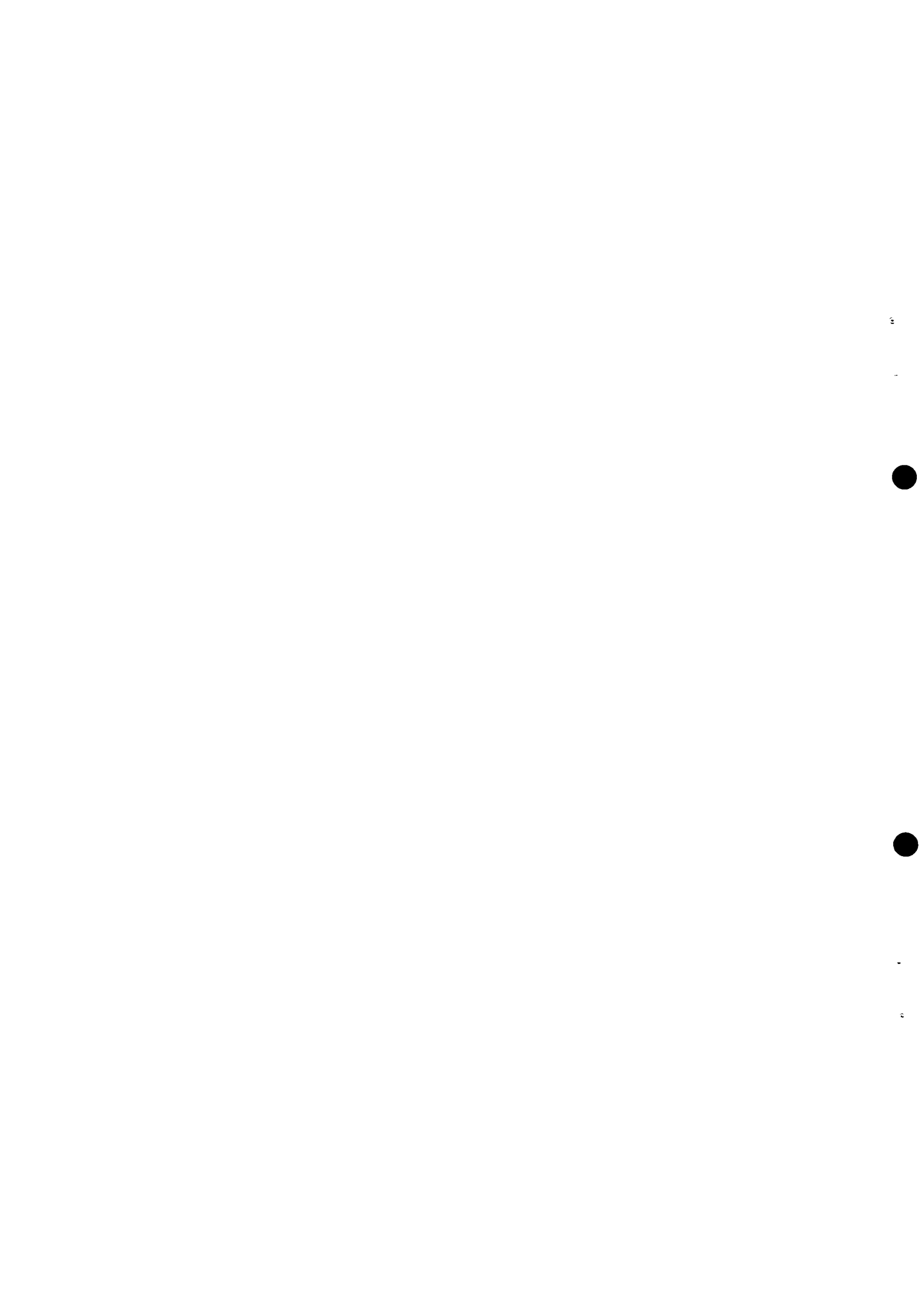
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latent purview of the Act, only to be inferred through its interpretation. The irrigational use of water and the hydro-electricity production has received high prominence in this piece of legislation, which is so suggested by the very name of the Act. Yet, we find that drinking water use finds a place if not in substantive law, in many topical laws e.g., Village Panchayat Act, Decentralization Act, etc. Recently, one Statute has been enacted to provide for the incorporation and constitution of a Corporate body called Nepal Water Supply Corporation. This Act, viz the Nepal Water Supply Corporation Act, 2046 (NWSC Act), provides mainly for the establishment and management of the Corporation rather than to address the acute need of safeguarding the rights of people to have safe drinking water. It speaks of the rights of the Corporation without having any regard to the reciprocal rights of the people over the Corporation. The Act mainly elevates the Status of the Corporation. It is now a chartered corporate body under a special statute rather than being one of the corporation constituted under an umbrella statute. The powers and functions of the Corporation is now entrenched in the Act itself in comparison to the earlier flexible position. This Act dissolves the earlier Drinking Water and Sewerage Corporation from the date of its enforcement. Hence, in the absence of a specific law devoted solely on drinking water use, actions need to be based on provisions scattered in many statutes and quite often inferences are to be deduced or interpretations are to be required to come to a particular conclusion.

2. Ownership and Regulation of the Resource

The water resources of the country is owned by the state although it is not specifically mentioned in the law itself. The CERWR Act in its preamble refers rivers, rivulets, lakes,



springs and underground water as important "national property". The same Act, save in certain type of uses, requires that licence is to be obtained for using water resources. This shows that the resources are owned by the state and the government issues licences for use of such resources. The people obtain the right to use it under the conditions mentioned in the licence. The interesting thing in this connection, however, is that the said CERWR Act applies only to those water resources which are prescribed in the Nepal Gazette. Recently, some of the water resources of the Kingdom have been prescribed in the notification published in the Gazette on March 19, 1990.

The Village Panchayat owns those watertaps, well, pond etc. which lie within its area and does not belong to anyone⁶. The Town Panchayat also has ownership over pond, watertap, well etc which lie within its area⁷. These facilities have been treated as the property of these bodies and are entrusted with the task of maintaining and regulating the use of these facilities. Besides His Majesty's Government, the regulation of drinking water also comes within the jurisdiction of various other agencies e.g., the Chief District Officer⁸, the Revenue Officer⁹, Town Development Board¹⁰, Kathmandu Valley Development Board¹¹, Pashupati Area Development Fund, ¹²Water

6. Section 24 of the Village Panchayat Act.

7. Section 37 of the Town Panchayat Act.

8. Essential Commodity Protection Act, 2012 and Essential Services Maintenance Act, 2012 as well as Local Administration Act, 2028.

9. Revenue Act, 2034.

10. Town Development Act, 2045.

11. Kathmandu Valley Development Board Act, 2045.



Supply and Sewerage Corporation¹³. These myriad of institutions and agencies have their own jurisdiction and area of action. One thing which is clear is that drinking water has been treated as public property and is regulated according to the exigencies.

3. The Right to Use Water for Drinking Purposes

The CERWR Act provides in its Section 3 that no licence is required for personal household use. Such an expression would include drinking use of water resource and hence the regime of licensing may not be applicable if some one taps the flowing resource for drinking purpose or digs a well or installs a shallow tubewell etc. But if such activities are undertaken on a commercial basis, a licence must be obtained. The licensee pays the licence fees to the government and, in turn, he may charge certain fees from the consumers.

Besides the licenced enterprises, there are other agencies, which have been empowered to regulate drinking water use. The Drinking Water and Sewerage Corporation, a government undertaking, incorporated under the Corporations Act, 2021 is authorised to manage and distribute the drinking water. In fact, the Government has handed over all drinking water establishments of 14 town panchayats to this entity in order to operate the system on commercial principles. The said corporation does this within the assigned urban areas as a municipal water supply system and runs this activity as a commercial venture. The Village and Town Panchayats are required by the respective laws to develop drinking water resources mainly for development purpose. The Kathmandu

¹² . Pashupati Area Development Fund Act, 2045.

¹³ Nepal Water Supply Corporation Act, 2046.



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Valley Development Authority and Pashupati Area Development Fund are also empowered to regulate the drinking water use within their respective areas under the respective statutes like Kathmandu Valley Development Authority Act, 2045 and Pashupati Area Development Fund Act, 2044.

In view of these legislative arrangements, the rights of an individual seem to be at variance. Under the general application of CERWR Act, as said above, the individual has a free access to water for drinking purposes, whereas in case of the facilities regulated by agencies, the individual's right becomes subservient to the terms and conditions imposed by the agency concerned.

4. Conditions on the Use of Drinking Water

As regards drinking water use there is no specific piece of legislation. An individual is free to use water for drinking purposes. Although it is not very explicit, a commercial use of water for drinking purpose may only be made under a licence.

So far as the water supply distributed by public bodies, like Water and Sewerage Corporation, or by a government agency or by an individual (including juridical body) is concerned, individual use of drinking water depends upon the fulfilment of conditions laid down by such body. Such an agency has been given full authority by law for administrative control over such use but it is rather surprizing that there is no any provision built in the Act on the individual rights and duties to check the proper work of the agency providing drinking water facilities. There are many instances where the subscribers interest are usually ignored by the agency. The subscriber problems are always ignored because their rights

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are not provided explicitly in the law. In fact subscriber and agency's rights and duties are equally important to operate and maintain the system properly. Other public bodies, excepting the government agency, need to receive permission of HMG to undertake the task of commercial distribution of drinking water from a resource prescribed in the gazette. However, the case of Village Panchayat and Town Panchayat is somehow different. The lake, watertap, well etc. situated within their territory belong to them as their property. Hence there is no need to obtain a licence for its use. These bodies are empowered to regulate such uses of water. As these bodies are made responsible for the execution of development projects, the projects concerning drinking water at the local level are handled by them. In such cases, the regulation and subscription of water resource for drinking purpose becomes a community affair.

5. Agency Responsible for Administering Drinking Water Legislation

From this point of view the whole legal regime on water resource relating to the administration of drinking water can be divided into following categories:

- (a) The Government
- (b) The Autonomous Bodies
- (c) The Panchayats

5.1 The Government

It is the government which is at the apex and is responsible for not only devising policies on drinking water but also laying down various conditions. In this connection mainly two line Ministries seem to be directly involved. The first



is the Ministry of Water Resources which, as its very name suggests, is the directly related Ministry. The CERWR Act does not mention as to which government agency is responsible for administering this Act in general. Questions like who is to prescribe the water resource to be administered under this Act, who is to issue licence for the various kinds of use, who is to monitor the observance of the conditions of licence are some of the questions which have not been clearly spelled out, particularly because drinking water is now no more within jurisdiction of Ministry of Water Resources. The second is the Ministry of Housing and Physical Planning which is responsible for administering the domestic use of water in general. If the total water resources are regulated under the CERWR Act, the drinking water administration has to be governed by a different system. So the resource administration and the use administration are now separate. The recent Act constituting the Nepal Water Supply Corporation assigns the responsibility of drinking water use administration in specific areas to this Corporation.

The Water Tax Act, 2023 empowers the government to impose and realise water tax from the consumers for the use of water supplied from the government water supply system. Similarly, under the Administrative Procedures (Regularization) Act, 2013 the government has made a regulation called Water Tap Charges (Realisation) Regulation, 2032 which empowers the Drinking Water and Sewerage Department to realise water charges from the consumers of the drinking water supplied from government taps. Here it is obvious that these two pieces of legislation have been made to deal with the same activity.



While analysing these two pieces of legislation, it becomes clear that they are the outcome of two different situations. The Water Tax Act, 2023 was enacted one year earlier than the CERWR Act, 2024. At that time, no Act existed which specifically empowers the government to impose water taxes. Water supply was considered as one of the services provided by the government and water tax was imposed in a manner similar to other taxes. Section 2 of this Act defines 'tax' as being the water tax imposed under the prevailing law. According to Article 3 the tax imposed under the prevailing law for any year or on an annual basis, shall be realised under this Act. The water tax under this Act is to be treated as government dues. However, the Water Tap Charges (Realisation) Rules, 2032 seems to have made a radical change in the very concept of the water tax. Water tax was converted into water charges. It was no more considered as a tax. It is now a charge to be realised for the services rendered. As a matter of fact the water supply system in the country till then was established and run by the Department of Water Supply and Sewerage. This function is still being carried out in the rural areas as well as in some urban areas by the Department. Various projects of water supply system is launched in the rural areas as governmental projects.

The government shoulders the responsibility of protecting and continuing the drinking water facility. Drinking water services is considered to be one of the essential service of the country. Continuation of the essential services is the duty and the responsibility of the Chief District Officer of the government¹⁴ Similarly, the government is empowered under Essential Materials Protection Act, 2012 and Essential Services Operation Act, 2014 to take various measures for the

¹⁴ Some Public (Crime and Punishment) Act, 2027 and Local Administration Act, 2028.



protection and operation of essential services and water supply has been prescribed as one of the essential services.

5.2 The Autonomous Bodies

Particularly for the urban water supply system, the Drinking Water and Sewerage Corporation was established in 2041 (1984) under the Corporation Act, 2021. Prior to the establishment of this Corporation an autonomous development board called Drinking Water and Sewerage Board was constituted on 2030/7/20 (1973) for the purpose of establishing water supply system in the country. Normally a development board is constituted mainly for executing development activities. In order to operate urban water supply system, a more permanent and autonomous institution was deemed necessary and thus the Board was replaced by the Corporation. The present day urban water supply system in the country is run by this Corporation. As a commercial entity, the Corporation is run under commercial principles. This Corporation constituted as such has been replaced by another Corporation constituted under the Nepal Water Supply Corporation Act, 2046 enacted on 2046/7/11 (October 27, 1989).

Recently, Kathmandu Valley Development Authority Act, 2045 was enacted and it established an Authority to look after the planned development of Kathmandu Valley. This Act has empowered the Authority inter alia, over the use of drinking water. It also empowers the Authority, to lay down conditions for the works to be carried out in relation to water resources within the area where the development plan is to be launched. This provision indicates that although this Authority does not have any direct control over the water supply system within Kathmandu Valley, it does have a significant impact upon the use of drinking water. Similarly, the Pashupati Area



Development Fund Act, 2044 also has authority to manage the use of drinking water within its area¹⁵.

5.3 The Panchayats

As regards development of drinking water system in the rural area, Panchayats play the vital role. The local Panchayats i.e., the District Panchayats, Town Panchayats and the Village Panchayats are directly involved in the development of water supply system in the country. The Decentralisation (Working Procedure) Rules, 2041, in its Rule 4, empowers the District Panchayat to provide and manage those water supply systems which cover the people of two or more than two village panchayats. Rule 13 provides that the Town Panchayat should provide safe drinking water to the people living within the Town Panchayat area, whereas the Village Panchayat is to provide safe drinking water to the villagers. These Panchayat bodies are to execute development projects aiming at providing safe drinking water to the people. As a matter of fact the whole planning process starts from these Panchayat bodies and except those projects which are being handled by the centre or are intricately tied-up with particular conditions agreed upon between the donor agency and the government development projects are implemented within the district by these bodies. The consumers benefiting from the projects are required to form Users Committee to operate and maintain the facility. When a public utility is operated by a public body it is but normal and legal to impose a charge for the use of such facility and to apply the incomes from such charges on its maintenance.

¹⁵ Section 14.1.5 of Pashupati Area Development Fund Act, 2044.



6. Order of Priority

The legal regime on water resources has not fixed any priority over various kinds of uses. It is not certain as to which one gets the priority either the drinking use or irrigation use or any other type of use. However, one may draw inferences from the provisions of law or some solution may be found when it is actually applied in practice. If a licence is issued, it certainly recognises that certain rights are secured. While issuing a licence, the authority decides as to which use of a particular resource is justifiable and issues the licence accordingly. In cases where licence is not required, for instance, where it is being used for household purpose by an individual, the situation may appear a little complicated. Particularly when there is a competing need for two households - drinking water vs other use or drinking water vs drinking water. In such a situation the law is not very much clear. In the case of irrigational use of water the principle for competing claim has been sorted out to a greater extent¹⁶. But in the case of drinking water use such has not been the case. Hence equity and good conscience and moral justice prevails in such a case.

The legal regime on water resources has also some exceptions to the general law. Mulki Ain, the Indian Contract Act and NDWC Act are applicable throughout the whole of the country. However, quite a few legislations dealing with water resources are area specific. The National Park and Wildlife Conservation Act, 2029 restricts the activities on rivers, ponds or other sources of water within the National Park. Similarly, Soil and Watershed Conservation Act, 2039 empowers the Conservation Officer to perform watershed conservation

¹⁶ Mulki Ain Chapter on Land Cultivation.



activities within a prescribed area. In such cases, the general rights of the people are subordinate to the rights of Conservation Officer in so far as it relates to the use of water which, of course, includes the drinking use.

7. Legislation on Drinking Use of Water

As said earlier there is no specific law on drinking use of water except that various bodies have been made responsible or are involved in constructing, operating and maintaining drinking water facilities to the general public. The CERWR Act which ought to have been the general law, is not still a comprehensive piece of legislation. It does not satisfy the needs of specific uses. Hence, it has to be presumed that this drinking water use comes within the general use of water resources. This Act empowers the government for framing rules on various aspects of water use including its pollution. However, only rules relating to irrigational use of water have been made so far.

Groundwater has not been considered as separate from the surface water, in so far as its regulation is concerned.

8. Legislation on the Protection of Drinking Water Works and Structures

There are mainly two types of measures designed for protection of the drinking water works and structures:

- general administrative measures,
- specific protective measures.



8.1 General Administrative Measures

Drinking water works and structures require general and special protective measures. The Essential Materials Protection Act, 2012 includes any drinking water source, which has been built by the government or other agency or with the permission of any agency, as "essential material". The government may also by notification published in the Nepal Gazette prescribe any matter as an essential material. It is the responsibility of local panchayat administration to protect "essential materials" even by posting guards, if necessary¹⁷. Section 6 of the Act even empowers the government to use police force if necessary.

Under Certain Public Offences (Crime and Punishment) Act, 2027 the regular operation of post, communication, transport, electricity and related public services (i.e., the water supply systems) are not to be obstructed. Any obstruction caused to these services have been considered as a crime under the said Act. Similarly, the Local Administration Act, 2028 makes the Chief District Officer responsible for maintaining the public taps, pond, well etc. Any act causing damage to public drinking water supply structures is prohibited and liable to punishment under the Act. Besides, it is the duty of the local panchayats that they should protect water works within their area.

¹⁷ Section 4 of the Essential Materials Protection Act, 2012.



8.2 Specific Protective Measures

The CERWR Act provides for the protection of the water works. If any person causing any damage to such works and installations, is liable to punishment with imprisonment or fine or both¹⁸. Similarly, the NWSC Act makes the Corporation responsible for protecting the structure, and pipelines. It also empowers the Corporation to impose fines etc.

9. Adjudicating Authority

Cases relating to drinking water use are mainly to be adjudicated by quasi judicial authorities. In this connection first comes the Village Panchayat. The Village Panchayat is empowered under Village Panchayat Act, 2018 to hear and decide on cases which are related to water use within its area. Such authority, however, has to be given by the government to the Panchayat by publishing a notification in the Nepal Gazette¹⁹.

Village Judicial Committee is constituted to look into such cases²⁰. The decision of the Judicial Committee is appealable to the District Court²¹.

Besides this, cases relating to the protection of water works within a district are to be heard and decided by the Chief District Officer²². Similarly, in the cases under Essential Materials Protection Act, 2012, the Zonal Commissioner is the

¹⁸ Section 13 of the CERWR Act, 2024.

¹⁹ Section 41 of the Village Panchayat Act, 2018.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.



adjudicating authority. His decision is appealable to the Regional Court²³.

The CERWR Act, 2024 empowers the government to designate authorities (the officer of the government) to hear and decide on various issues and cases relating to water use. In some cases where no authority has been mentioned the jurisdiction lies on the District Court.

Similarly, the NWSC Act empowers the Corporation and its designated sub-committee to impose fines on persons contravening the provisions of the Act. However, the punishment of imprisonment can be imposed only by the District Court.

This shows that the adjudicating authority in most cases relating to water use are the same authorities who are also responsible for the administrations and protection of drinking water.

So far as the penalties are concerned an act of the violation of the concerned law may be punished with a fine up to five thousand rupees and imprisonment up to ten years depending upon the gravity of offence²⁴. Sentences of imprisonment can be passed only by a District Court having jurisdiction to try, hear and decide the case under the Act.

²³ Section 9 of Essential Materials Protection Act, 2012.

²⁴ Section 13 of CERWR Act.



10. Conclusion

A review of the existing legal regime on drinking water resource reveals

- That there is no specific law on the drinking water use.
- That drinking water use has to be inferred from the references to the general use of the water i.e. any reference to water also includes the drinking water.
- That there are some legislations which deal with the development aspect of the drinking water use.
- That the CERWR Act which seem to be related to drinking water use needs more elaboration and effective application.
- That the duty of protecting water works and adjudicating the problems relating thereto are entrusted to the local administration.
- That the laying of pipes etc and construction and implementation of drinking water projects are assigned to the local panchayats.
- That the urban water supply is dealt with by autonomous bodies.



CHAPTER II

Identification of Problems and Issues

1. Basic Features of Legal Regime

Water is used for various purposes. Hence, any legal regime that pertains to water is expected to regulate its various uses. Some substantive issues touch upon all kinds of uses, whereas other issues are of very specific in character, which need to be addressed in a specific way. The review presented in the preceding chapter reveals certain basic features of the legal regime on water resources. They can be broadly summarized to be as follows:

- (a) The law on irrigational use of water resources in the country bears comparatively a long history than any other use. So far as drinking water use is concerned there are very few references here and there. There is no specific law as such which addresses this use.
- (b) The law which deals directly on water resources has mainly emanated from the irrigational and hydroelectricity production uses of water. The Canal Electricity and Related Water Resources Act, 2024, as its name suggests deals mainly with those two kinds of uses, although the scope of its provisions can encompass the various uses of water.
- (c) The CERWR Act was not brought into substantive operation because water resources to which the Act can be applied had not been identified and legally prescribed. Only recently on March 19, 1990 some water resources have been prescribed.



- (d) The priorities of uses of water is not yet fixed by law.
- (e) Local Panchayats are empowered to construct and operate water resource project. The law on drinking water, from this perspective, is mainly guided by prescriptive norm of development rather than regulating the rights.
- (f) The reason for the absence of an elaborate piece of legislation on drinking water seems to be the non-scarcity of water in the country.

The problems associated with drinking water are mainly three: First that the source of water lies far from the concentration of population, and hence requires investment to bring it to the reach of the people, second that the water that is supplied is not as free from contamination as it should be and third that there is no priority of uses fixed by law. Hence, the concerns of law have to be mainly on the improvement of services relating to drinking water, construction and management of drinking water projects and safeguarding peoples' right over it. Drinking water being one of the vital basic human needs, people have interest on their rights to obtain pure drinking water. The political society is normally and socially obliged to provide such water to its members. Similarly, such rights also import reciprocal duties to protect and preserve the Water Utilities and to prevent misuse and wastage of water. From this perspective following issues of law need improvement and changes:

2. Issues Concerning the Source of the Water

The main question regarding the source of water is - who owns it - the state, the local bodies, private individuals, autonomous institution ? As stated in the earlier chapter

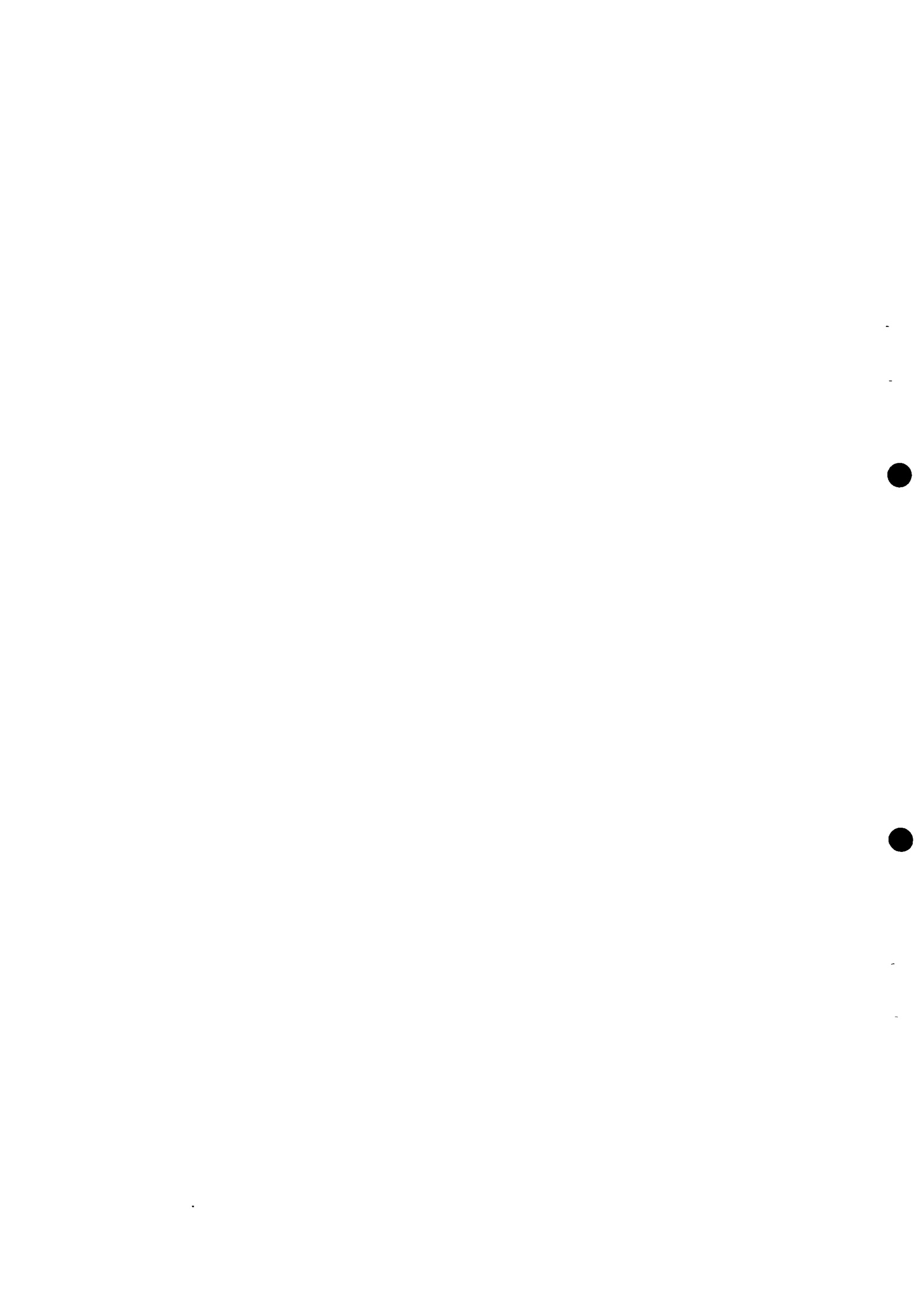


the CERWR Act in its preamble states that it is a "national property". The Village Panchayat Act states that Village Panchayat owns the pond, water-tap, wells etc., lying within its area. However, the ownership of the source of water - a river, a spring, a pond, a spout etc., which may still need further works, is not very much clearly established. Hence, conflict may arise as regards the preparation and operation of a project. People claim that the water adjoining their place belongs to them. In the absence of clear cut rules, conflicts have arisen between the individuals, government bodies and Panchayats.

The CERWR Act provides an exception that no licence is required for "household use". This means that even if the source of water is prescribed in the Gazette, the drinking water use does not come within the fold of the Act. The right to use the resource can be granted under the licence for the commercial use of drinking water. But that also does not solve the problem, for it would not answer the conflict of right between the individuals and autonomous bodies. So far as the government is concerned the CERWR empowers the government to undertake projects even if it affects the individual rights. The rights of government prevails over individual's right. The government, however, has to pay the compensation.

3. Issues Relating to Priority

There are various uses of water. However, no priority of one use over the other has been fixed by law. In the absence of a fixed priority, conflicts arise between one use over the other. Certain uses of water, e.g. irrigation, are not efficiently managed at certain places. Had the water been used efficiently, it could have been sufficient for both the



purposes -irrigation as well as drinking water. Such a situation have appeared where there are competing needs and the water is scarce.

4. Issues Relating to Construction and Maintenance of Projects

The projects for drinking water suffer basically from three types of problems - right of access to lay pipes, breakage of pipes, damage to and destruction of facilities created and continued maintenance of such facilities. Generally, there are two types of projects - government run projects and the projects run by local Panchayats. In the case of government projects, the above mentioned type of problems are more severe than in the projects operated by local panchayats. Hence, such projects face considerable difficulty in their execution and operation.

5. Issues Relating to Installation of Drinking Water Facility and Distribution of Water

The installation of drinking water facility is one of the problem particularly in rural area. In many cases, conflicts have arisen among people on the issue of installation of drinking water facility. In areas where water is not sufficient, this problem has become more acute and difficult to solve. Often, such projects have to face non-cooperative attitude or even wrath of a segment of inhabitants living in that area. Similarly, distribution of water is also an issue between the upstream and downstream beneficiaries served by the same source. The government managed projects have their own rules and regulations whereas the Panchayat or Community also manage it in their own way. However, no rules or procedures exist in a documented form, for the regulation of these affairs properly.



6. Quality of Water

As a matter of fact, very little attention is paid to the quality of drinking water. In urban areas, where water supply is being run by corporation or Board, little attention is paid to the quality but that too is not sufficient. In the rural areas the quality of water has not been an object of consideration. There are places where drinking water has been made available by the Panchayats with the government assistance. But the water so distributed lacks required treatments such as adding of iodine content or chlorine or potassium etc., which prevent goitre and other water borne diseases among the people. Deterioration in the quality of water has emanated both from the source and also during its conveyance to the water-tap. There are also needs of hyginical storage of water in the reservoir and prevention of entrance of hazardous substances in such reservoirs.

7. Issues Relating to Physical Changes

The source of water is affected by changes in the physical conditions. The changes that occur due to environmental degradation seems to be prime at present. The depletion of forest and flora brings changes in the source of water which affects its distribution. In many cases the source of water diminishes or even dries up in its quantity due to physical changes. This has created problem of distribution and finding of another intake. In certain cases the project itself has to be abandoned.

8. Problems Seen Through Field Study

In order to assess the magnitude of problems and issues at site, two teams were despatched - one to the eastern hilly



districts and another to the western hilly districts, which were known to have drinking water problems for some time. Their reports, which are attached to this Report, reveal basically the following problems :-

- (a) The sources of drinking water are very limited and there is scarcity of water in such source. Hence water is not enough to cater to the needs of all inhabitants.
- (b) Water sources are often located very far from the villages which render the locally run projects very costly and diminish the cost effectiveness.
- (c) Villages having nearer access to the sources are reluctant to share the resource with other villages for fear of inadequacy to them.
- (d) Social and political rivalry among the villages obstruct the smooth execution and operation of drinking water projects by such villages.
- (e) Conflict in the use of available water resources is also a source of problems. Often one's need of drinking water is also subject to others' extravagant or nefarious uses.
- (f) The distance among the villages makes the construction and maintenance of larger projects ineffective and uneconomical.
- (g) Panchayats are often reluctant to solve the conflicts among the villages and solutions provided by local administration are often temporary.



CHAPTER III

Suggestion and Recommendation

The list of problems and issues regarding drinking water supply to the people could be very exhaustive. Those that have been identified in the earlier chapter are the basic ones. In this chapter, some suggestions shall be offered to solve those problems. On this effort towards finding out solutions, two clear directions emerge. The first is to bring changes in the existing legal regime. It has become very much apparent that there is an urgent need of a comprehensive water code encompassing all kinds of uses of water, which should clearly define the rights and duties of the administering agencies, and individuals. However, it would take a long time to accomplish this task. Within the Code, it has to be ascertained that the drinking water use gets proper attention. Pending the preparation of such legislation, this study attempts to achieve some of the objectives of national requirements by utilising the existing legal provisions. It has been found that quite often lack of prompt and effective administrative or legal actions are the root cause of the problems rather than the provisions of law. In the following pages attempts shall be made to show how the problems could be tackled through the existing provisions of law.

1. Conflict between Drinking Water and Other Uses of Water

Most of the problems relating to drinking water evolves from the lack of co-ordination and proper planning. At the district level there needs to be a proper co-ordination between mainly the irrigation and drinking water use to ensure that these main uses do not conflict with each other. For proper use of the resources, first of all, preparation of an inventory of the available resource is necessary. It has been



known from the concerned agency that Water and Energy Commission Secretariat has completed the preparation of such an inventory for 35 districts. Such an inventory should be used while planning drinking water use. It has to be made sure that the proposed project serves the need of the people and the competing demands for various other uses are properly accommodated. Accommodation, negotiation and decision based on general consensus is the best solution for solving conflicts on various uses of water. Such a conflict is generally between the two departments or between two Panchayats or Villages which can be solved through such process. As regards conflicts between government or community projects and the individual use, they also can be solved by negotiation. If any individual does not agree, his property can be acquired by paying compensation under the Land Acquisition Act, 2034. Similarly, an individual's property can also be acquired by the Village Panchayat under Section 30A of the Village Panchayat Act, 2018 for construction of development project within its area. The District Panchayat, Town Panchayat or the Village Panchayat, according to Decentralisation Act, 2039, have to prepare their respective development plans. While preparing such a plan proper co-ordination needs to be effected. The Decentralisation Act, 2039 in its Section 9 clearly stipulates that those projects which fulfil the basic minimum needs of the people should be given priority over projects which are merely helpful in enhancing agriculture production. Drinking water projects, hence, should be given priority over irrigation projects. It is to say that the law has provided the mechanism through which the conflict regarding various uses, in so far as it relates with the development projects are concerned, can be resolved.



2. Maintenance of the System

The maintenance of drinking water projects entails two important activities - the regular operation and protection from damage. As regards regular operation, the Local Panchayat forms a Users Committee after the completion of the project which is entrusted to regularly operate and maintain the services. The Users Committee may make rules for the use of the drinking water facility. The Users Committee is also authorized to impose charges for the maintenance of the system. If the system is operated by the government, it has the duty to maintain it and has the authority to impose charges for the use of the service²⁵. The public taps are provided free of water charges.

As the responsibility of maintaining the system lies on the Village Panchayats, they are empowered to take action against any damage to the system. The drinking water system established by the Village Panchayat or the Town Panchayat are the property of those panchayats²⁶ and thus if any person causes any damages to such property, the Panchayats have powers to punish such person under Section 65 of the Village Panchayat Act and Section 54 of the Town Panchayat Act. They are also made responsible to make arrangements for protecting these properties by posting guards. These properties may also be protected by the local administrative authority under Essential Materials Protection Act, 2012 through the inclusion of drinking water facilities within the definition of Essential Material by publishing an appropriate notice in the Nepal Gazette under Clause (K) of Section 2 of the said Act.

²⁵ Water Tax Act, 2023.

²⁶ Sec. 24 and Sec 37 of the Village Panchayat and Town Panchayat Acts respectively.

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Any person who damages such essential materials is liable to be punished with a fine equal to the value of the property damaged and the value of the property may also be recovered. The Provision of Nepal Water Supply Corporation Act, 2046 is also to cover all cases of protection, concerning those facilities which are within its jurisdiction.

3. Quality of the Water

As already observed in the earlier chapters, the drinking water use is being handled by various agencies. So far as the quality of urban water supply is concerned the Water Supply and Sewerage Corporation and its successor Nepal Water Supply Corporation is responsible for the supply of hygienically safe drinking water. Establishment of Water Treatment Plant is one among the various objective of the corporation²⁷. As the supply of drinking water is a commercial activity, it is the responsibility of the Corporation to supply hygienically safe drinking water.

CERWR Act empowers the government to frame rules on the quality and standard of the water to be distributed and also on the measures of prohibition to control pollution of water²⁸. However, it is still not clear as to which Ministry is to frame Rules on Drinking Water under the Act. Obviously, the Ministry of Housing and Physical Planning should have the duty to frame such Rules and not the Ministry of Water Resources which handles major portions of the Act. Probably due to this

²⁷ Paragraph 2 (c) of the notification of the Ministry of Water Resources establishing the Drinking Water and Sewerage Corporation and Section 5 of the Nepal Water Supply Corporation Act, 2046.

²⁸ Section 14 of the CERWR Act., 2024.



confusion, it is interesting to note that no such rules have been framed under the said Act.

So far as Local Panchayats are concerned the Village Panchayat is empowered to frame Regulations on the prevention of pollution of drinking water within its area²⁹. To provide hyginically safe and un-polluted drinking water to the people within its area is the responsibility of Village Panchayat³⁰. Similarly, the Town Panchayat is also empowered to frame Regulations on the prevention of pollution of drinking water³¹ because this function falls within the sphere of activities of the Town Panchayat³². Both the Village Panchayats and Town Panchayats are also empowered to impose fine for the violation of the provisions of Regulation regarding the pollution of drinking water³³. Hence, there exists a mechanism to control pollution and the duty to provide hyginically safe drinking water to the people. These provisions should be brought into effective operation. Besides, His Majesty's Government is empowered to issue directives to the Village or Town Panchayat. Such directives are to be observed by the Village or Town Panchayats³⁴. Regarding the prevention of pollution, necessary directives may be issued to the panchayats.

²⁹ Sec. 76 of the Village Panchayat Act, 2018.

³⁰ Sec. 22 (e) of Decentralization (Working Procedure) Rules, 2041.

³¹ Sec. 60 of Town Panchayat Act, 2019.

³² Sec. 13 of the Decentralization (Working Procedure) Rules, 2041.

³³ Section 55 and Section 54 of the Village Panchayat Act, 2018 and Town Panchayat Act, 2019 respectively.

³⁴ Sec. 62 and Section 44A of the Village Panchayat and Town Panchayat Acts respectively.

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4. Conflict Between Upstream and Downstream Users

As said earlier the conflict between drinking and irrigational use of water can be solved by maintaining co-ordination between the two agencies of the government. Law has provided the mechanism to solve such conflict arising during the planning and execution of a project. As regards any conflict between two or more individuals, the statutes cited above are not clear. The nature of the conflict generally arises on the priority rights regarding the upstream and downstream uses. Muluki Ain (National Code), provides general principle of law as regards the irrigational use but regarding drinking water use there is no such specific provision. In a situation where a conflict on drinking water use between two individuals or groups of individuals arises, there is no specific law to govern and determine the priority of rights. In case of a conflict of use according to the licence issued under the CERWR Act, the situation would be different because the rights of the individual is clearly established in such a case. Hence, there is a need to clearly establish the priority of rights between the individuals on the drinking use of water.

5. Conclusion

From the analysis presented in this report it has become clear that the existing legal regime on water resources is far from adequate. There are several problems that are associated with drinking water use. Those problems have been identified in Chapter II of this report. The ultimate answer to these problems is to devise proper law which would address the issues associated with those problems. While trying to frame any law on water one has to look to the comprehensive nature of the subject matter. No doubt drinking water is the basic and essential use of water. But there are other uses also

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which cannot be ignored. Hence, a broad framework legislation needs to be brought out which could encompass within it various specific regulations on various uses of water.

Proper management and use of water cannot simply be based on legal provisions. The inadequacy of legal provision may be an impediment but cannot be an excuse for not doing anything in this area. As a matter of fact any legal regime that deals with such a vital subject like drinking water would likely to be ignored if it merely addresses itself to more administrative measures than managerial ones. Proper management could solve lot of problems. It has been found that even under the present existing legal regime much can be done. Chapter III of this report, where suggestions and recommendations have been made, presents the concept that, on the one hand giving of more powers to the project authorities to penalise the wrong doers is not the best solution, whereas on the other hand, there is no legal impediment in effecting coordination between various agencies for managing the competing uses of water in the context of a project. As shown above in Chapter III, there are some existing legal provisions which could be brought into operation for helping to solve various problems in this connections. Hence, more emphasis needs to be given on the management of water use under the existing legal regime while the emergence of new law takes place in future. The Consultant believes that such an approach would solve most of the problems.

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ANNEX I



ANNEX_I

**HIS MAJESTY'S GOVERNMENT
NOTICE OF THE MINISTRY OF WATER RESOURCES**

His Majesty's Government, in exercise of the power conferred by Sub-section (1) of Section 8 has dissolved Drinking Water and Sewerage Board constituted according to the notice published in the Nepal Gazette Part 3, Vol 23, dated 2030/7/20 Number 29 of the Ministry of Water and Electricity.

By order

**Madhusudan Dhakal
Secretary of His Majesty's
Government**

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HIS MAJESTY'S GOVERNMENT
NOTICE OF THE
MINISTRY OF WATER RESOURCES
2041/4/1

In exercise of the power conferred by section
Act, 2021, His Majesty's Government has established and constituted
the following corporation

1. Name of the Corporation :- The corporation may be called
"Drinking Water and Sewerage Corporation".
2. Head Office of the Corporation : The objectives of the
corporation shall be as follows :
 - (a) To arrange drinking water and sewerage system for the
health and convenience of the general public.
 - (b) To facilitate drinking water and sewerage system easily
and accessibly with reasonable price to the general
public.
 - (c) To conduct and control the sewerage system and to make
it more effective and to establish a purification centre.
 - (d) To maintain tap, water pipe and pipe related with
sewerage system lying under public domain.

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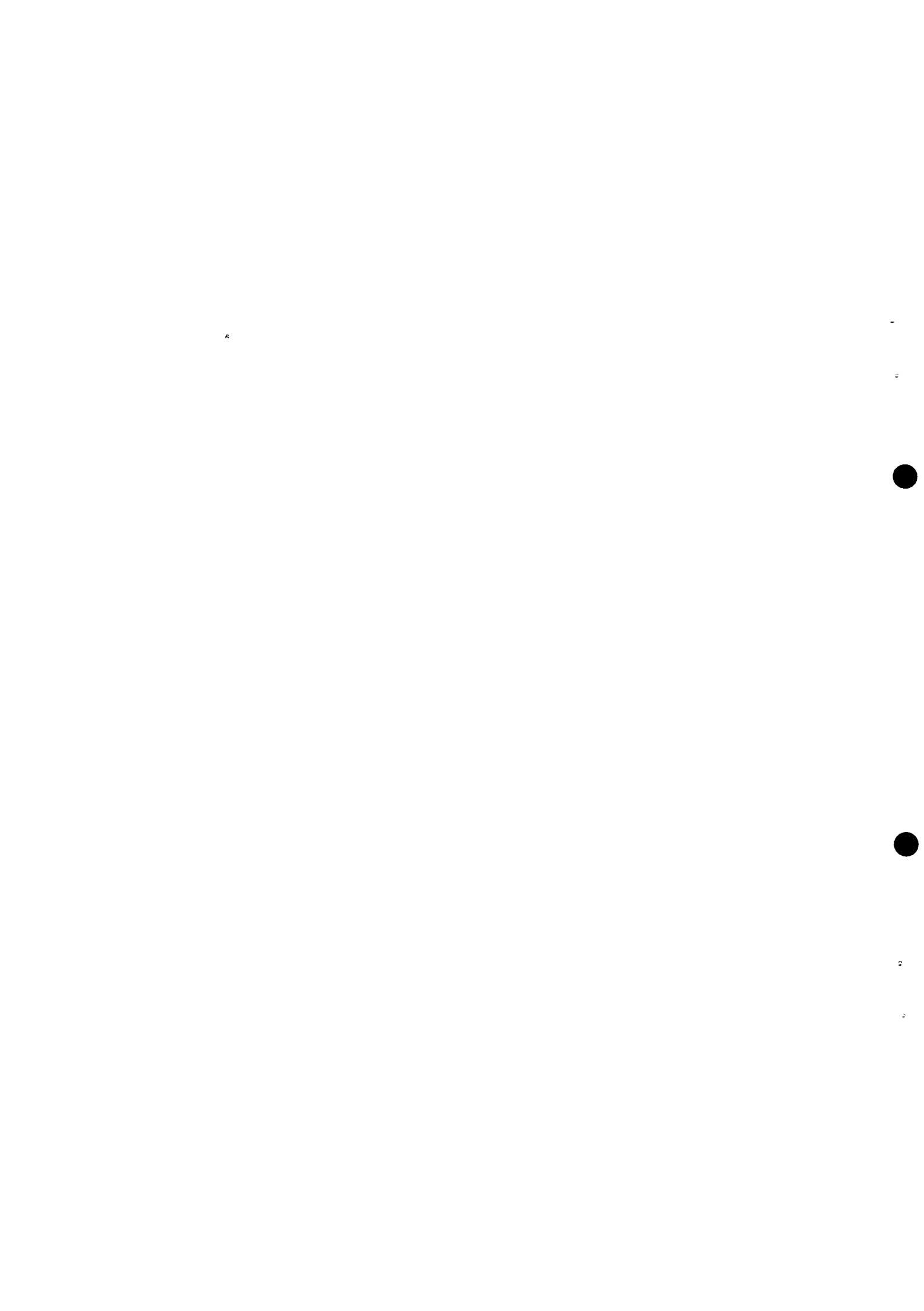
4. Board of Directors : (1) There shall be a Board of Directors comprising of the following chairman and members:

- (a) Secretary, Ministry of Water Resources - Chairman
- (b) Chief Engineer, Department of Drinking Water and Sewerage - Member
- (c) Representative, Ministry of Finance - Member
- (d) Representative, Ministry of Home - Member
- (e) Representative, Department of Health Services - Member
- (f) Representative, Department of Road - Member
- (g) Representative, From Private Sectors prescribed by His Majesty's Government - Member
- (h) General Manager, Drinking Water and Sewerage Corporation - Member Secretary

(2) His Majesty's Government, if it deems necessary, may by publishing a notification in the Nepal Gazette make additions or deviations from the numbers of the Board of Directors.

5. Transformation of Assets and Liabilities of the Corporation:

- (1) All the movable and immovable assets and liabilities of Drinking Water and Sewerage Board shall be deemed as done by the Corporation.
- (2) All contracts, agreements and transaction done by the Drinking Water and Sewerage Board shall be deemed as done by the Corporation.



6. Arrangements Relating to the Staff :

The staff of the Drinking Water and Sewerage Board has been made continued in the reasonable post in the corporation by facilitating under the terms and condition of the said Board by counting the service period from their date of appointment in the Board.

By order,
Madhusudan Dhakal
Secretary of His Majesty's Government



TOWN PANCHAYAT (WORKING-ARRANGEMENTS) REGULATION, 2044

5.4 Use of Tax, Fee, Charge, Duty etc.

The Town Panchayat shall subject to the plan and programme as passed by the Town Assembly use the tax, fee, charge, duty etc realised pursuant to this chapter on the following works for the service and welfare of the inhabitants of the town:

- (a) Creating of health facility within the Town Panchayat area and the proper cleaning and management of waste for improvement on public health.
- (b) Development, improvement and maintenance of transport facility within the Town Panchayat area.
- (c) To make available drinking water within the Town Panchayat area and improvement and maintenance relating to drinking water.
- (d) Works relating to educational and cultural development within the Town Panchayat area.
- (e) Provision for organized market within the Panchayat area for goods of daily consumption.
- (f) Other development activities within the Town Panchayat area pursuant to Decentralization Rules, 2041.

5.5 To Pay Tax

The tax which is to be paid to the Town Panchayat shall have to be paid within the same fiscal year. If it is paid after the lapse of the fiscal year the Town Panchayat may impose a



fine of one percent of the tax amount for each month of delay. Provided that the amount of such fine shall not exceed the due tax amount.

5.6 To be Realised as a Government Due

The Town Panchayat may realise the tax, charge, fee, duty or service fee imposed by it from the defaulters as a government due pursuant to prevalent law.



PUBLIC ROAD ACT, 2021

33. Power to Frame Rules :

- (1) His Majesty's Government may frame rules for implementing the objectives of this Act.
- (2) In exercise of the power conferred by sub-section (1) the following matters shall be arranged by framing such rules without making any contradiction in general :
 - (h) The procedure to be followed in constructing any sewage or lying of pipe or cable in public road or through the border of the road.



TOWN DEVELOPMENT ACT, 2045

3. Preparation of Town Planning and Approval :

3.1 The committee may prepare Town planning to fulfil any or all objectives of the following:

3.1.3 To provide services and facilities on the basis of density of population in such area after deciding the area of land utilization for the town development.

9. Regularize, Control or Prohibition may be made :

9.1 No person shall do or cause to do act against the act which are clearly stated in a notice published by the committee in time to time to regulate, control or prohibit the following acts according to the necessities within the town area without obtaining the trust approval of the Committee.

9.1.5 To use road, street, bridge and the means of transport to be used on it, afforestation, water, light etc.

11. Functions, Duties and Rights of the Committee :

11.1 The functions, duties and rights of the Committee shall be the following in addition to the functions, duties and rights stated elsewhere in this Act.

11.1.4 To prescribe terms and condition for the protection of nature and environment within the town area regarding possible construction work and other activities in the forest, river or stream, water source and water area and to do or cause to do according to the prescribed terms and conditions.



KATHMANDU VALLEY DEVELOPMENT AUTHORITY ACT, 2045

2. Definition :

2.1 Unless the subject or the context otherwise requires in this Act.

2.1.10 "Service facility" means road, street, open place, park, recreational center, play ground, water electricity, telephone, sewerage, school, hospital etc.

3. Establishment of the Authority :

For the planned development of Kathmandu valley and to provide essential services and facilities to the general people by preparing physical development plan and to execute it, a Kathmandu Valley Development Authority has been established.

5. Preparation of Physical Development Plan and Approval :

5.1 For the physical development of Kathmandu valley the Authority may prepare physical development plan for the fulfilment of any or all the objectives of the following :

5.1.4 To provide essential services and facilities to the general people.

6. Functions, Duties and Rights of the Authority :

6.1 The functions, duties and rights of the Authority shall be the following in addition to the functions, duties and rights stated elsewhere in this Act.



6.1.4 To prescribe terms and condition for the protection of nature and environment within the planning area regarding possible construction work and other activities in the forest, river or stream, water source and water area and to do or cause to do according to the prescribed terms and condition.

8. Regularize, Control or Prohibition may be made :

8.1 No person shall do or cause to do act against the act which are clearly stated in a notice published by the Authority in time to time to regulate, control or prohibit the following acts according to the necessities within the planning area without the prior approval of the Authority for the execution of physical development plan.

8.1.6 To use road, bridge, means of transportation, water, light, telephone etc.

14. Constitution of the Board of Directors :

14.1 A Board of Directors shall be constituted for conducting, supervising and managing the functions of the Authority.

14.2 The following members shall be in the Board of Directors constituted pursuant to sub-section 14.1.

14.3.5.7 Drinking water and Sewerage Corporation.



PROTECTION OF ESSENTIAL MATERIAL ACT, 2012

2. Definition : Unless the subject or context otherwise requires in this act - "Essential Necessities" means the following and include other things which are associated or assembled with them.

(e) Source of drinking water which has been constructed by His Majesty's Government or any institution themselves or under a licence issued by them.

3. Prohibition on Actions by Unauthorised Person and Punishment for the Commission of such Acts : Nobody shall, by himself or by deputing others, affect unauthoritatively, take out, break down, spoil and steal by any means any essential necessities. If it is done or caused to be done by others a punishment of paying the involved amount and a fine amounting to such amount shall be awarded besides the punishment that is to be awarded pursuant to the prevailing Acts and Rules.

Provided that no accusation shall be made if the above acts except stealing have been done for repair or maintenance by some one under the authority of the owner of the essential necessities. If any essential necessity has been damaged due to accident and the same has been informed to any government office in case it is outside the capital and to the office of the Zonal Commissioner in case it is inside the capital, any person involved in such an accident shall not be deemed to be a convict. However, the amount of damage has to be paid.

9. Power to Hear Cases and Appeals : The Zonal Commissioner shall have power to decide the cases under this Act and an appeal against such decision shall lie on the Zonal Court.



PASHUPATI AREA DEVELOPMENT TRUST ACT, 2044

12. Formation of Executive Committee :

12.1 The Executive Committee of the trust shall be formed by the chairman to execute the approved plan and programme by the trust and to operate day to day works, supervise, control and other works as directed by the council.

14. Function, Duties and Rights of the Committed :

14.1 The function of the committee shall be the following :

14.1.5 To adopt the regular and effective procedure for the well maintenance of drinking water, outlet sewerage, electricity, telephone, road and other basic means of public utilities and to maintain cleanness without making any dirty.



WATER TAX ACT, 2023

An Act made to Provide for a System to Realise Water-tax

Preamble : Whereas it is expedient to establish working procedure to realise water-tax to be levied under prevailing Nepal Law.

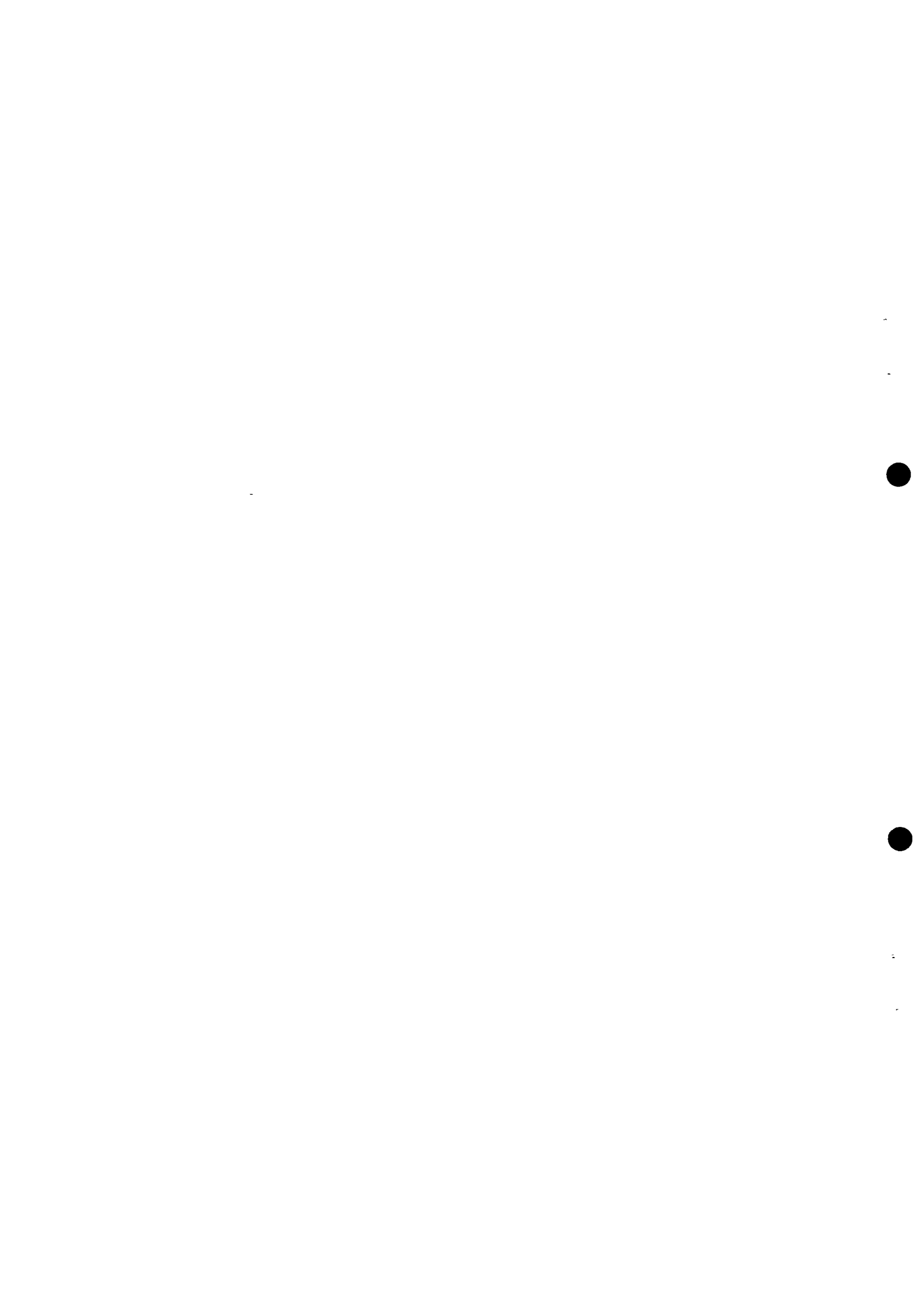
Now, therefore, His Majesty Mahendra Bir Bikram Shah Dev has, on the advice and with the consent of the National Panchayat, made this Act.

1. Short Title, Extent and Commencement

- (a) This Act may be called "Water Tax Act, 2023".
- (b) This Act shall extend throughout the Kingdom of Nepal.
- (c) This Act shall come into force immediately.

2. Definition : Unless the context otherwise requires, in this Act:

- (a) "Water-tap" means the water-tap installed for the purpose of consuming the water distributed through pipe line by His Majesty's Government.
- (b) "Tax" - means the water-tax to be levied pursuant to prevailing Nepal Law.
- (c) "Tax-payer" means any individual, firm or corporate institution having a duty to pay water-tax pursuant to sub-section (1) of Section 4.
- (d) "Prescribed" or "as Prescribed" means prescribed or as prescribed in the Rule framed under this Act.



3. Tax to be Realised Pursuant to this Act : In case a provision is made in any Act to levy tax annually or once for a year, such tax shall be realised pursuant to this Act and the Rules made hereunder.

4. Duty to Pay Tax :

(1) Each individual who has registered a water-tap in his name shall, in lieu of such water-tap, pay as provided in this Act, the amount of water-tax levied pursuant to this act or other prevalent Nepal Law.

(2) The tax to be paid pursuant to sub-section (1) shall be computed from the month of its installation and be paid monthly pursuant to sub-section (3).

Explanation: Tax for the month of the installation of water-tap has to be paid irrespective of the actual date on which it is installed.

(3) Water tax for each month shall be paid by the taxpayer up to the end of the following month. Provided that the due tax shall be paid within two months of the commencement of this Act.

(4) Notwithstanding anything written in Sub-section (2) and (3) if the taxpayer wishes to pay the tax in advance of the period as mentioned in sub-section (3), he may pay such tax as an advance for any number of months.

5. Additional Charges : If any taxpayer defaults to pay tax within the period as mentioned in sub-section (3) of Section 4, following additional charge shall also be realised from him:



- (a) 10 percent of the tax if it is paid within fifteen days of the expiry of such period
 - (b) 20 percent of the tax if the tax is paid after fifteen days but within thirty days of the expiry of such period
 - (c) 50 percent of the tax if it is paid after 30 days but within three months of the expiry of such period, and
 - (d) Cent per-cent of the tax if it is paid after 90 days but within six months of the expiry of such period.
6. Distribution of Water to be Stopped : If the taxpayer does not pay due taxes within six months of the expiry of the period as mentioned in sub-section (3) of Section 4 and the charges pursuant to Section 5, the distribution of water pursuant to paragraph (a) of Section 2 through the water-tap registered on his name shall be stopped.
7. Arrears of the Due Tax : The arrears of the due water-tax levied pursuant to this Act or the Rules made hereunder shall be realised pursuant to prevailing Nepal Law as if it were a Government dues, by the office or authority as prescribed.
8. Transfer of the Title on Water-tap :
- (1) If the title on a water-tap registered on the name of any tax-payer is transferred, a written application for the registration of such water-tap on the name of the transferee shall be submitted to the prescribed office within a month. If such application is submitted after the expiry of the said period, the chief of the prescribed office shall start proceedings pursuant to



sub-section (2) by awarding a fine up to Rs. 10/- to such applicant.

(2) If anyone transfers the title on a water-tap registered on his name to any person, he should submit an application within one month to the prescribed office for the cancellation of his name from the list of registration. If such application is submitted after the expiry of the said period, the chief of the prescribed office shall cancel the registration of the name by awarding a fine up to Rs. 10/- to such applicant.

(3) If any application pursuant to sub-section (1) is filed, the prescribed office shall conduct necessary inquiry in a prescribed manner and if such water-tap is not claimed by any other person, it should be registered in the name of the applicant and if there is a claim of any other person proceedings shall be started as prescribed.

9. Exemption from Water Tax : Notwithstanding anything written in Section 3 or any other prevailing Nepal Law no water-tax shall be levied on the following water-tap:

(a) One which has been installed within the premises of Royal Palace;

(b) One which has been installed in any building under the authority of His Majesty's Government or any Government office;

(c) One which has been installed in any public school, hospital, library, orphanage, religious institution, temple, inn, public shade etc;

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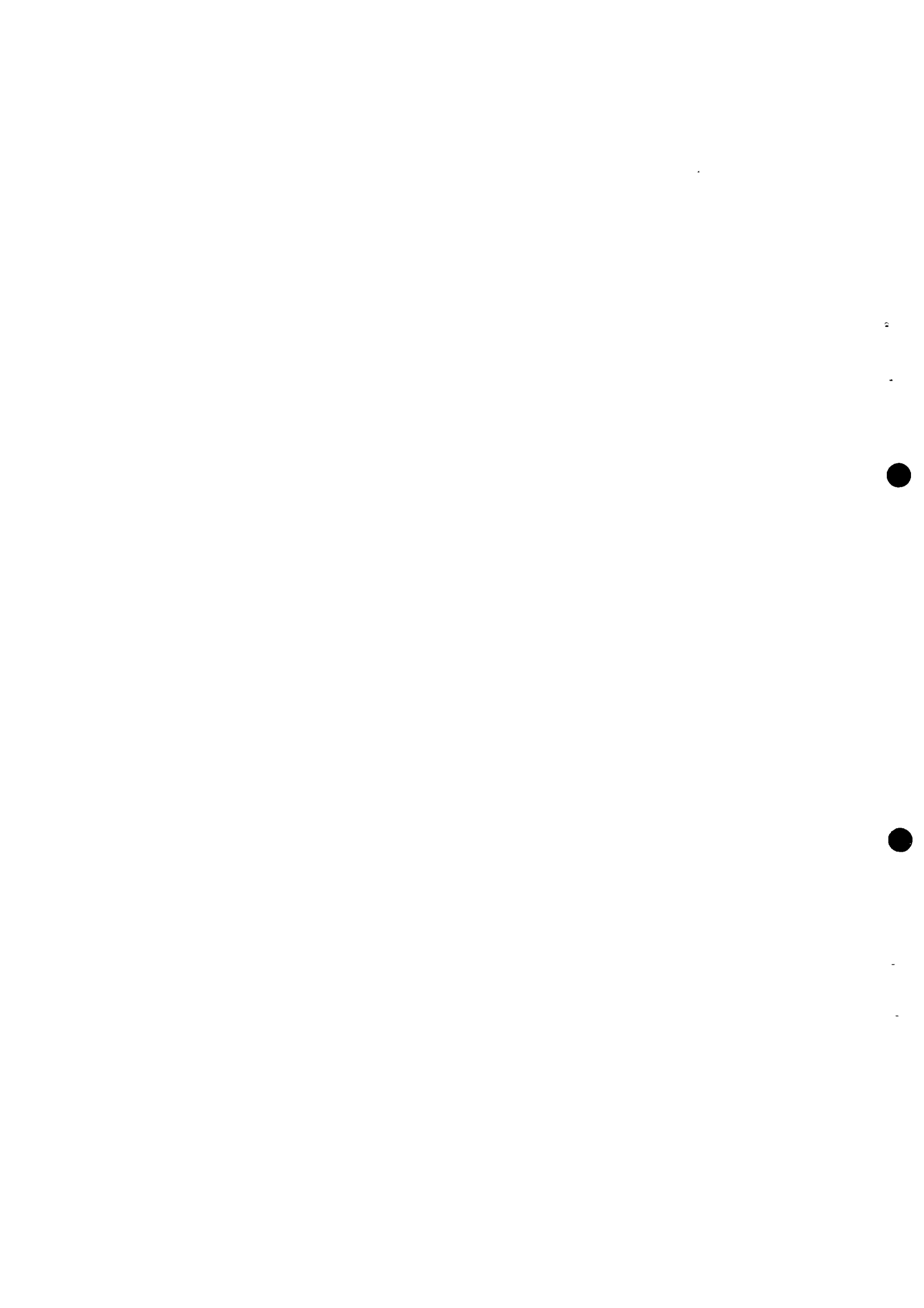
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- (d) One which has been installed on roads or parks for the purpose of public welfare;
 - (e) One which has been registered in any individual's name but installed by such individual for public welfare on certain religious or social institution or any public thoroughfare, during the period of such installation;
 - (f) One which has been prescribed by His Majesty's Government by publishing a notification in the Nepal Gazette, as being a water-tap on which tax has been waived partially or wholly.
10. Punishment : If a person shall consume with the intention of avoiding tax levied pursuant to this Act or any prevalent Nepal law. The water distributed pursuant to paragraph (a) of section 2 through means other than the water-tap registered in the prescribed office, he shall be punished with a fine of up to Rs. 1,000/- or imprisonment up to three months by the order of the authority as prescribed.
11. Provision for Appeal : (f) An appeal shall lie to the Revenue Tribunal against an order of the punishment awarded by the prescribed authority pursuant to Section 10.
12. Power to Frame Rules : His Majesty's Government may frame Rules for the purpose of fulfilling the objectives of this Act.
13. Saving : Matters for which provision has been made in this Act shall be governed by this Act and the rest of the matters shall be governed by the prevailing Nepal Law.



WATER_TAP_CHARGES_(REALISATION)_REGULATION,_2032

His Majesty's Government, by exercising the authority vested on it pursuant to Section 2 of Administrative Procedure (Regularisation) Act, 2013 has framed this regulation.

1. Short Title and Commencement : (1) These Rules may be called "Water-tap Charges (Realisation) Regulation, 2032".

(2) Sub-rule (4) of Rule 4 of these Rules shall commence immediately and other rules shall be deemed to have commenced from Shraavan 1, 2031 B.S.

2. Definition : Unless the context otherwise requires, in these Rules --

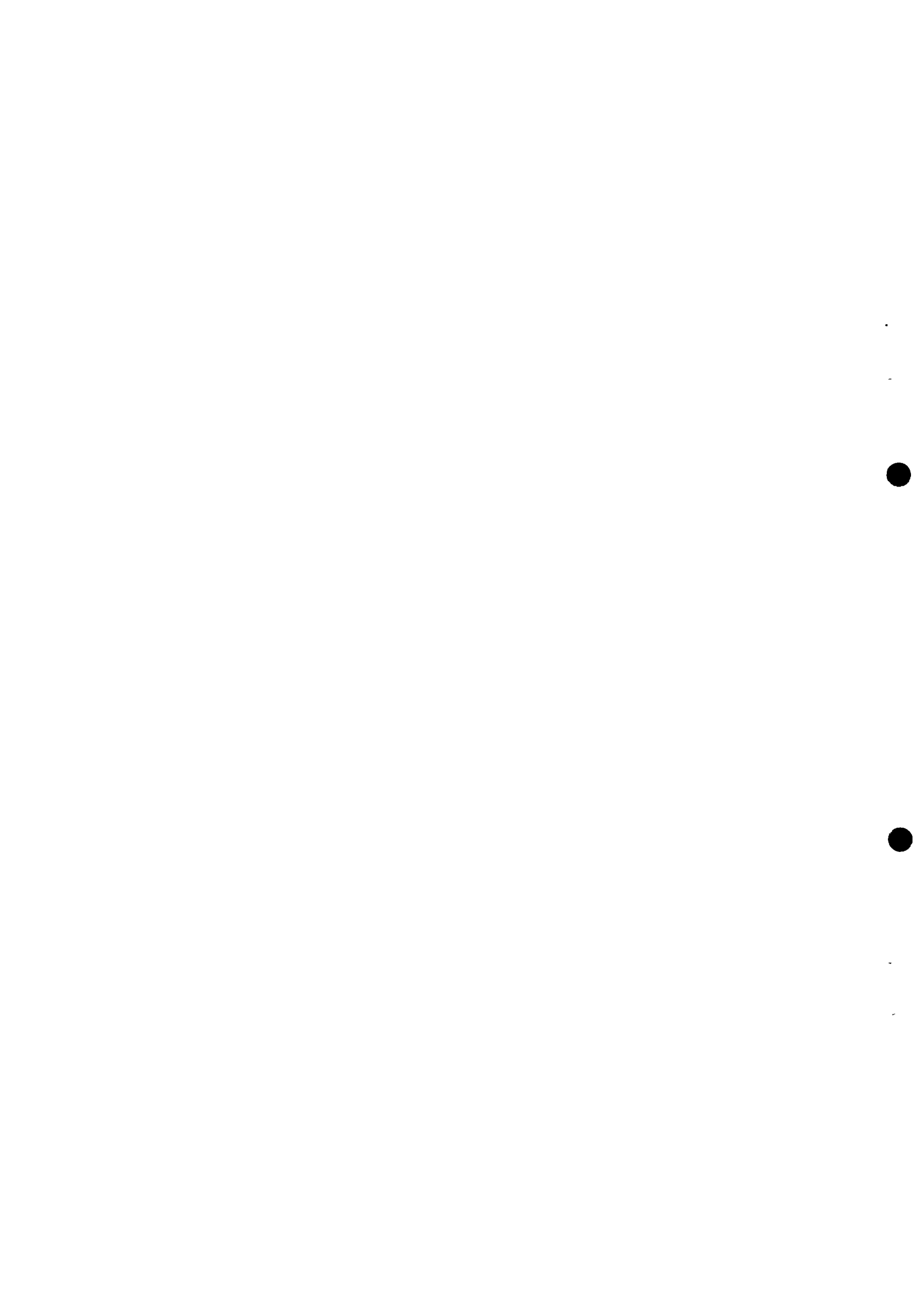
(a) "Water-tap" means water-tap installed for the consumption of water distributed by the Department.

(b) "Charges" means the charges to be paid in lieu of the watertap and the 'T' to be attached to the water-tap pursuant to these Rules.

(c) "Charge-payer" means any person who has the duty to pay charges of water-tap.

(d) "Department" means the Drinking Water and Sewerage Department of His Majesty's Government.

(e) "Office" means the local office established by the Department for the purpose of distribution and supervision of water-tap and realisation of charges and includes any other office or authority prescribed by the Department for such work.



3. Rate of Water-tap Charges :

- (1) The rate of water-tap charges shall be as prescribed in the schedule.
- (2) His Majesty's Government may, by publishing a notification in the Nepal Gazette amend or change the charges as prescribed in the schedule.

4. Time and Office where the Water-tap Charges is to be Paid :

- (1) Each charge-payer shall pay to the office the water-tap charges levied pursuant to these Rules.
- (2) The charges required to be paid pursuant to sub-rule (1) shall be computed from the month of the installation of water-tap and be paid pursuant to sub-rule (3). Notwithstanding the day of the month on which the water-tap has been installed the charge for the whole of the month shall be paid.
- (3) Water-tap charge for each month shall be paid by the charge-payer up to the end of the following month.
- (4) The charge-payer may pay earlier than the time prescribed in sub-rule (3), the charge for any number of months as an advance. If the charge, when it is due, is paid up to the 15th day of the month, a rebate of 50 paise per tap per month shall be granted.
- (5) Notwithstanding anything written in sub-rule (4) no rebate shall be given on the payment of charges for temporary water-tap.



5. Extra Charge to be Levied after the Expiry of the Period : In case the charges are paid after the expiry of the period mentioned in sub-rule (3) of Rule 4 following extra charges shall be levied:

(a) An amount of ten percent of the charge if it is paid within one month of the prescribed time.

(b) An amount of twenty percent of the charge if it is paid within one month after the expiry of the time prescribed in paragraph (a).

6. Stoppage of the Distribution of Water :

(1) The department may stop the distribution of water on following conditions:

(a) In case any charge-payer does not pay the charge when due within the time prescribed in paragraph (b) of Rule 5.

(b) In case water is consumed without installing water-spout in the pipe or where meter is installed any improper activity is conducted on the meter or the pipe with the intention of showing low consumption of water.

(2) In case, water distribution is stopped, it shall not be resumed unless the dues and extra charge or the loss suffered by the Department due to non-installment of water-spout in the pipe or improper activities conducted on the meter or the damage caused to the meter is not paid.



- (3) If someone wishes to transfer his entitlement on any water-tap registered on his name, an application with an entitlement transfer charge of rupees twenty, should have to be filed at the office where the record of water taps is kept.
- (4) The office on making necessary inquiry about the application filed pursuant to sub-rule (3), if finds no one as a claimant of the title of such water-tap, shall transfer the requested entitlement. In such case the water-tap charge of the month preceding such transfer shall be paid by the usual titleholder.

7. Transfer of Title on Water-tap :

- (1) If a house or a land where any water-tap is installed is acquired by any person by purchase or otherwise the title to such water-tap may be transferred to such person.
- (2) The person acquiring land pursuant to sub-rule (1) should file an application along with such documentary evidence to the office where the record of water-tap is kept and the concerned office, if, on enquiry, finds the statement of the applicant as true, it should transfer the entitlement. Irrespective of the date of the transfer of entitlement the person who gets the entitlement on the land or house shall pay the charges of water tap from the same month on which the transfer of entitlement has taken place. Provided such entitlement cannot take place unless the outstanding charges are paid.

8. Transfer of the Title on Water-tap cannot be Made : Except within the premises of the house where the water-tap has been installed it can not be transferred. In the case of



transferring the place of the installment of water-tap a charge of Rupees ten shall be levied for such transfer.

9. The Registration of Water-tap may be Cancelled : Any person who is not in need of water-tap would have to file an application for the cancellation of its registration in the office where the record of the registration in the office where the record of the registration of water-tap is kept and the water-tap charge of the month on which such cancellation has been effected shall have to be paid irrespective of the date of such cancellation. If the charges have been paid as an advance for the forthcoming months such charges which are in excess of the month of the cancellation of the registration shall be refunded.
10. Expenses for Installation and Repair : The expenses for the installation of new water-tap or the repair of the already existing water-tap shall have to be borne by the charge payer or the person who wants to have the water-tap.
11. Waiver could be made of the Charge for the Period in which the Distribution of Water has been Stopped :
 - (1) If the Department is confident that any charge payer has not been able to utilise fully the water-tap due to any disturbance in the distribution of water, the Department may waive the charges of such period.
 - (2) If it becomes expedient to waive the charges for the charge payer of certain area or region, the Department shall, by a notification published in the Nepal Gazette, grant such waiver.

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12. His Majesty's Government may Waive the due Charge :

(1) If the Department decides that it is not possible to realise the charges which are due for long or is not expedient to realise such charges, proceedings for disconnecting the water supply should immediately be started and at the same time intimation should be given to His Majesty's Government for waiving the charges which have remained due for long.

(2) If it is found reasonable to waive the charges pursuant to sub-rule (1) His Majesty's Government may waive the charges which have remained due for long.

13. Water-tap to be Disconnected if the Water Charges have Remained due for Long : Before the commencement of these Rules, if any charge payer has been found to have not paid the water charges due pursuant to prevailing Nepal law his water connection may be disconnected on the order of the Department.

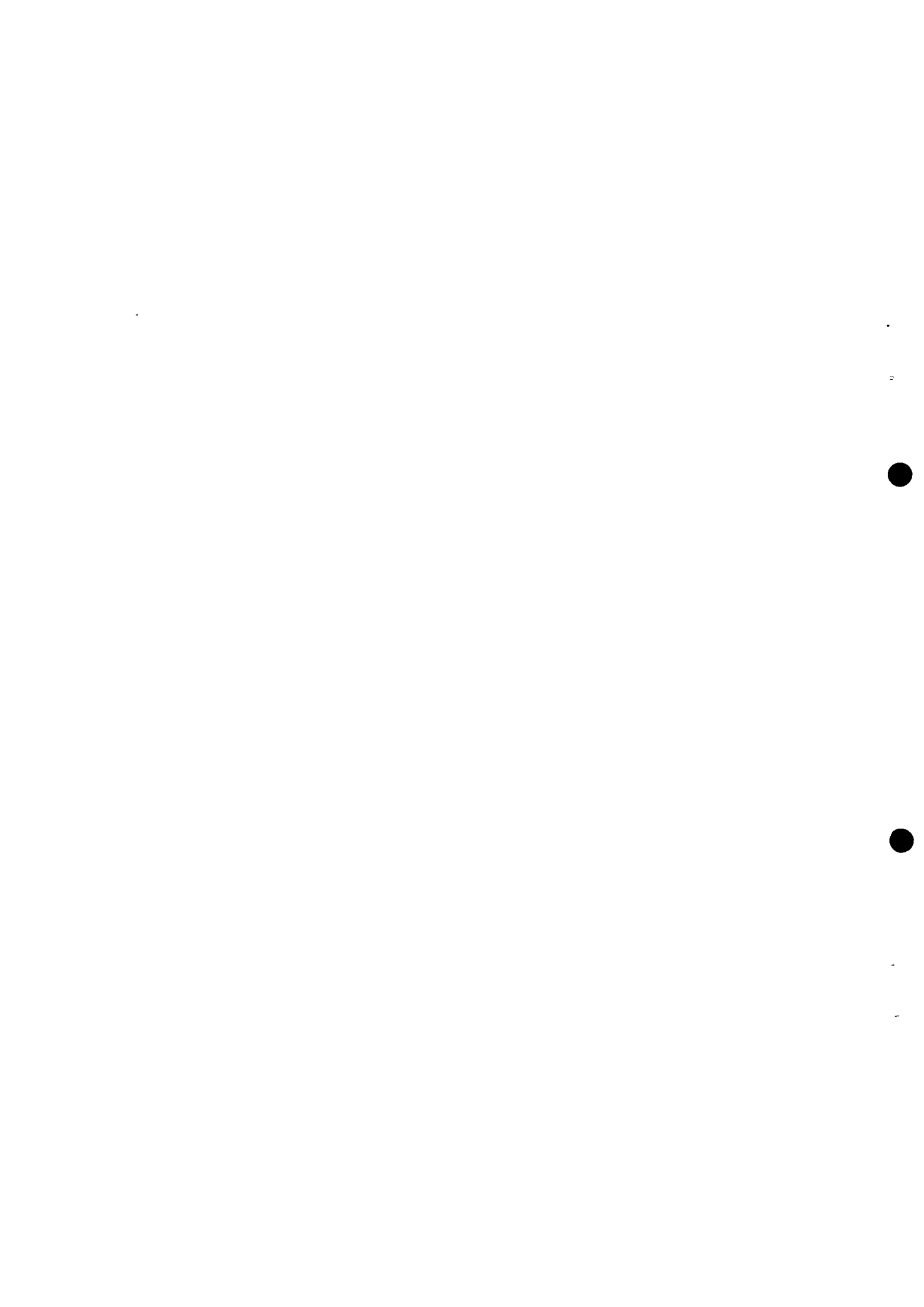
14. Non Application of these Rules : On such regions where the drinking water has been distributed by Drinking Water and Sewerage Board these Rules shall not prevail.



SCHEDULE

(Relating to sub-rule (1) of Rule 3)

Size of the tap	Charges	
(On inches)	First tap	Each T of such tap
1/2	Rs. 5/-	Rs. 3/-
3/4	Rs. 30/-	Rs. 6/-
1	Rs. 60/-	Rs. 12/-
1 1/2	Rs. 170/-	Rs. 30/-
2	Rs. 340/-	Rs. 50/-
3	Rs. 930/-	Rs. 100/-
4	Rs. 1,930/-	Rs. 235/-



REVENUE ACT, 2034

Section 24

24. Prohibition on Registration or New Cultivation of Public Land or Land Within Government Forest Area:

- (1) Any land which is used as traditional thoroughfare, road, grazing ground, water front, burial place, cremation ground, waterspout, public pond, banks of pond, source of water, cattle passage, market place, public entertainment and sports ground, similar kind of land used commonly or affecting common interests and any other land prohibited or restricted for cultivation or kept barren by His Majesty's Government, may not be recorded or get recorded in the register (for personal use).
- (2) Excepting the plan of His Majesty's Government for resettlement through clearing of forest lands or His Majesty's Government has issued an order to the contrary, any land within the area of government forest, forest land without any demarcation line, uncultivated or unregistered cultivated land surrounded by forest may not be recorded or get recorded in the register (for personal use).
- (3) Despite any recording of the lands mentioned in Subsections (1) and (2), no person shall have a right to claim or cultivate such land by dint of such records and all such records shall be void per se.
- (4) Despite any recording prior to the commencement of this Act of the lands mentioned in Subsection (1) and, among the lands mentioned in Subsection (2), the uncultivated

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lands and lands containing forest and shrubs, no person shall have the right to claim or cultivate such land by dint of such records and the Revenue Office or the authority designated by His Majesty's Government may at any time cancel such records after the commencement of this Act.

DECENTRALISATION ACT, 2039

Section 19 - Users' Committee:

- (1) If the plan to be executed by the local panchayat falls within the jurisdiction of one ward only, the concerned panchayat shall constitute from among the persons benefitting from such plan a Users' Committee consisting of seven members at the maximum under the Chairmanship of the Ward Chairman.
- (2) If the plan to be executed by the local panchayat falls within the jurisdiction of more than one ward, the concerned panchayat shall constitute from among the persons benefitting from such plan, a Users' Committee consisting of nine members at the maximum under the Chairmanship of one of the concerned Ward Chairmen.
- (3) The rights, duties and functions of the Users' Committee shall be as prescribed.

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DECENTRALISATION (FUNCTIONS) RULES, 2041

Rule 4, Sub-rule (1), Clause (e) --

Rights, Duties and Functions of the District Panchayat -

(e) In respect of the drinking water and hydro-electricity, the following acts shall be performed within the district -

- (1) To prepare drinking water plan benefitting the people living within more than one Village Panchayat area and to construct, repair and maintain water tank, hand-pumps, wells, water-spouts, water-taps etc. to provide pure drinking water.
- (2) For providing pure drinking water, to distribute hand-pumps, water-tank and water-tap and to assist in digging water-spouts and wells.

Rule 13, Sub-rule (1), Clause (e) --

Rights, Duties and Functions of the Town Panchayat --

(e) In respect of the drinking water and hydro-electricity, the following acts shall be performed within the Town Panchayat areas -

- (1) To make arrangement for providing pure drinking water to the people residing within the Town Panchayat area;
- (2) To construct, repair and maintenance of water-taps, tubewells, wells etc. at public places of the Town Panchayat and to protect and keep them clean;
- (3) To distribute water-taps as far as possible in order to provide inhabitants of the town pure water to drink;

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(4)omited.....

Rule 22, Sub-rule (1), Clause (e) --

Rights, Duties and Functions of the Village Panchayat --

- (1) To prepare drinking water plan and programme for providing pure drinking water to the people living within Village Panchayat area and to execute them.
- (2) To construct, repair and maintain water-taps, water tank, hand-pumps, wells, water-spouts, etc. at public places to provide pure drinking water.
- (3) To construct public and common utilities such as water-tap, water-spout, wells, ponds, water source, water for cattle use, ponds for washing clothes etc. and to arrange to keep them always clean;
- (4) To construct water tanks and to arrange for distribution of water-taps as many as possible according to the demands of the villagers;
- (5) To arrange for water ponds for the drinking water of cattle;

Rule 33

Constitution of Users' Committee

- (1) The local panchayat shall constitute Users' Committee in accordance with Section 19 of the Act.
- (2) In case where the concerned panchayat has not constituted Users' Committee according to Sub-rule (1), the local panchayat of next higher order may constitute such Users' Committee.

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- (3) In relation to the projects commenced prior to the commencement of these Rules, the local panchayat may constitute Users' Committee and hand it over such projects.

Rule 34

Meeting and Procedure of Users' Committee

The meetings and procedures of the Users' Committee shall be as follows :

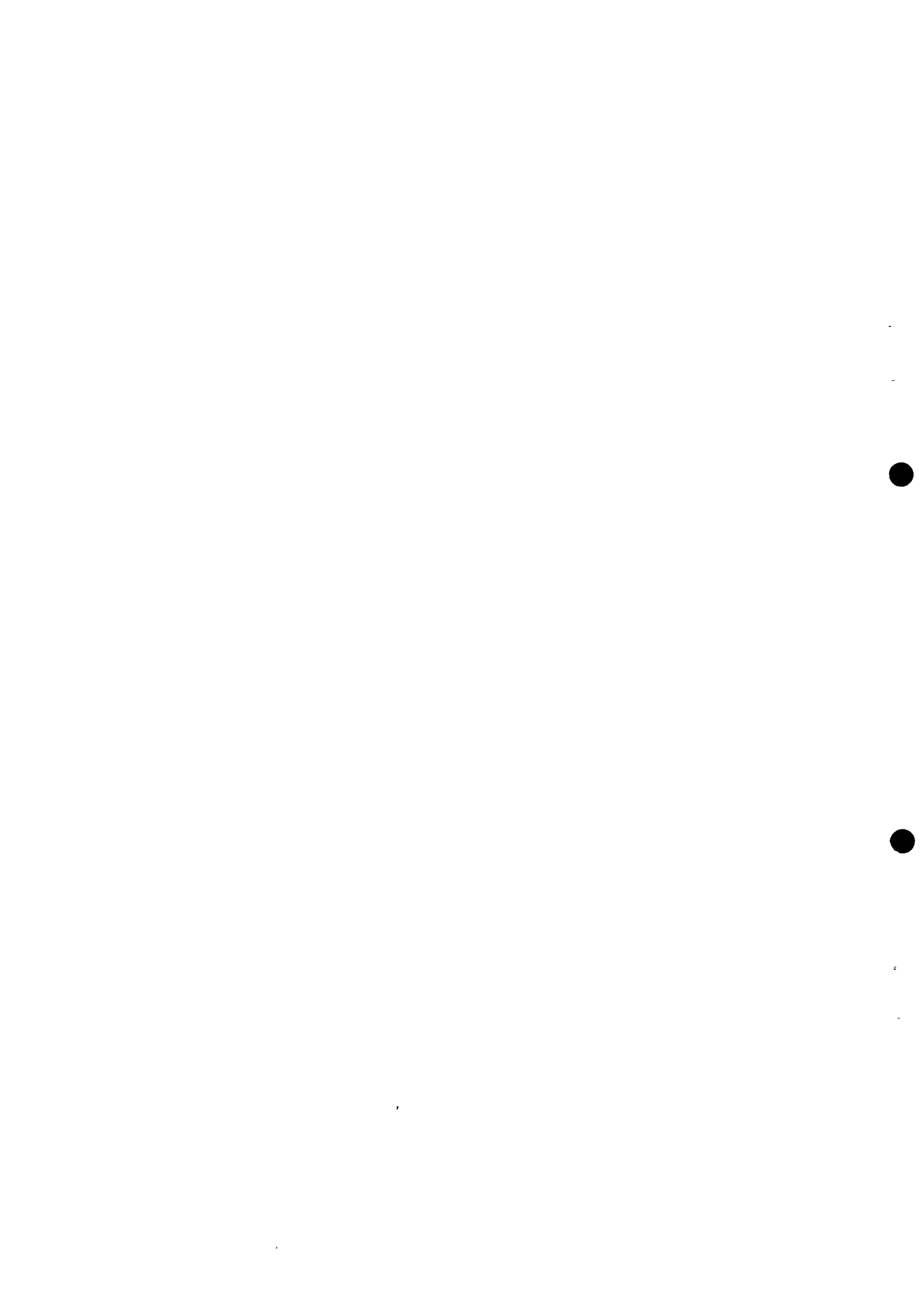
- (a) The Chairman of the Users' Committee shall convene the meetings of the Users' Committee at least once in a month.
- (b) Decisions made by the majority of members attending the meetings of Users' Committee shall be valid.

Rule 35

Rights, Duties and Functions of the Users' Committee :

The rights, duties and functions of the Users' Committee shall be as follows --

- (a) To properly execute projects assigned to itself and to complete them;
- (b) To arrange for operation and maintenance of the completed projects;
- (c) To determine fees to be collected from the users required for the operation and maintenance of the projects;
- (d) To continue active involvement for expansion and improvement of the project;



(e) The Users' Committee shall convene meeting of all users at least once every year and shall submit its report on the project, statements of income and expenditure etc. and shall implement the suggestions of such meetings.

(f) The Users' Committee shall submit at the concerned office, as required by law, statement of funds received for implementation of the project and all bills and receipts relating to expenditure.

Rule 39, Clause (m)

Rights, Duties and Functions of Secretary of Village Panchayats :

(m) To keep records of the Users' Committee working within the Village Panchayat;

Town Planning Act, 2045

3. Preparation of Town Plan and Its Approval

3.1 In order to fulfill any or all of the following objectives, the Committee may prepare a town plan --

3.1.1 To conduct physical development of a town in an integrated manner in any part of the Kingdom of Nepal.

3.1.2 To reconstruct, extend and develop an existing town and to construct a new town.

3.1.3 To determine the land-use areas for town development and to provide essential services and facilities on the basis of the density of population of such area.



3.1.4 To perform all other functions related to the aforesaid works.

9. Power to Regulate, Control and Prohibit

9.1 If deemed necessary, the Committee may, through specific and clear public notices published from time to time, regulate or control or prohibit any of the following acts within the town planning zone and nobody shall perform or caused to be performed any act so regulated, controlled or prohibited without prior permission of the Committee --

9.1.1 Possession and use of any agricultural land, natural resource, botanical products, forests, wildlife, or of any cultural, religious and historical places and any cultivated and uncultivated land and any other immovable property;

9.1.2 Construction of any building, office or any other new construction or any expansion of such existing objects;

9.1.3 Construction or development of any new habitation, settlement or housing scheme and creation or establishment of places for entertainment, market, shopping or industry, etc.;

9.1.4 Any activity adversely affecting natural beauty, touristic place and public health or polluting environment in any manner;

9.1.5 Use of any road or access, bridges and any means of transport plying therein or any afforestation or other uses of water, electricity etc.



11. Rights, Duties and Functions of Committee

11.1 In addition to the rights, duties and functions of the Committee specified elsewhere in this Act, the rights, duties and functions of the Committee shall be as follows --

11.1.1 To divide the town planning zone into several land-use areas;

11.1.2 To determine essential conditions for physical development of land-use areas and to prescribe procedures for construction in such areas;

11.1.3 Subject to the existing Nepal laws on ancient monuments, to develop and execute appropriate project for requisite development and maintenance of religious, cultural and historical heritages in the town planning zone;

11.1.4 To prescribe and execute conditions for construction and other activities to be performed in the forests, rivers, embankments and watersheds in order to protect and preserve nature and environment of the town planning zone;

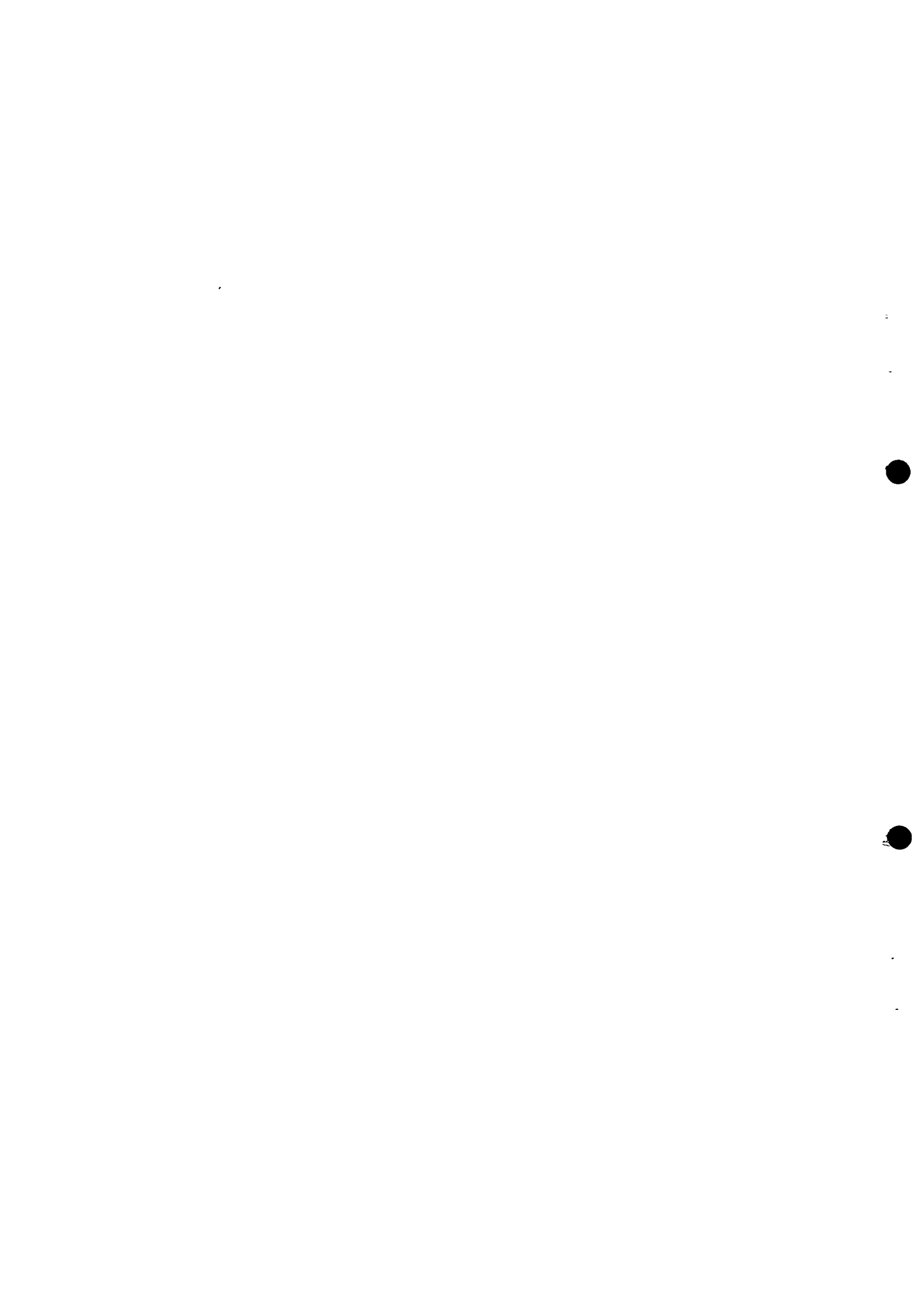
11.1.5 To prohibit methods of consumption adversely affecting natural resources;

11.1.6 To formulate and execute land development and housing construction projects in the land-use areas as directed by the town plan;



11.1.7 To perform other functions as directed by His Majesty's Government according to the town plan.

11.2 While performing functions under this Act, it shall be the duty of the Committee to perform them in coordination with other concerned agencies of His Majesty's Government.



(Unofficial Translation)

NEPAL DRINKING WATER CORPORATION ACT, 2046

The following Act was published in the Nepal Gazette, Part II, Vol. 39, Extraordinary No. 39, dated 2046/7/11 (October 27, 1989).

Act No. 23 of 2046
An Act made to provide for
the establishment and management of
Nepal Drinking Water Corporation

Preamble

Whereas it is expedient, in order to maintain health and comfort of the public in general, to make provisions for the establishment and operation of Nepal Drinking Water Corporation for regular supply of pure drinking water and for proper management of sewerage system in the Kingdom of Nepal;

Now, therefore, His Majesty King Birendra Bir Bikram Shah Deva has, upon the advice and with the consent of National Panchayat, enacted this Act.

1. Short Title and Commencement :

1.1 This Act may be cited as "Nepal Drinking Water Corporation Act, 2046."

1.2 This Act shall come into force from the date appointed by His Majesty's Government in a notice published in the Nepal Gazette.



2. Definitions :

2.1 Unless repugnant to the subject or context, in this Act, -

2.1.1 "Corporation" means Nepal Drinking Water Corporation established under Section 3.

2.1.2 "Committee" means the Executive Committee constituted under Section 8.

2.1.3 "Chairman" means the Chairman of the Corporation appointed under Section 11.

2.1.4 "Prescribed" or "as prescribed" means prescribed or as prescribed in the Bylaws made under this Act.

3. Establishment of Corporation :

3.1 Nepal Drinking Water Corporation is hereby established in order to provide for regular supply of pure drinking water and for proper management of sewerage system in several Town Panchayats and specified areas of the Kingdom of Nepal as designated by His Majesty's Government in the Nepal Gazette.

3.2 The Head Office of the Corporation shall be located in the Kathmandu Valley.

3.3 Other offices of the Corporation may be located at any place within the Kingdom of Nepal as required.

4. Corporation as a Body Corporate :

4.1 The Corporation shall be an autonomous and corporate body having perpetual succession.



4.2 The Corporation shall have a seal of its own.

4.3 The Corporation, as a person, may acquire, hold, dispose of or manage by any other means any movable and immovable property.

4.4 The Corporation, as a person, may sue or be sued in its name.

5. Rights, Duties and Functions of Corporation :

5.1 The rights, duties and functions of the Corporation shall be as follows --

5.1.1 To prepare plans relating to drinking water and sewerage system and to execute such plan;

5.1.2 To conduct studies, research and survey works relating to sources and distribution of drinking water and sewerage;

5.1.3 To determine the layout of drinking water from the source to the distribution points and to demarcate it;

5.1.4 To undertake construction works as required in relation to drinking water and sewerage;

5.1.5 To undertake works to be accomplished under Agreements relating to drinking water and sewerage concluded between His Majesty's Government and foreign governments or international or foreign agencies;

5.1.6 To execute development projects relating to drinking water and sewerage as specified by His Majesty's Government;



5.1.7 To render services by providing drinking water and sewerage facilities by levying fees and charges;

5.1.8 To prescribe essential conditions relating to consumption of drinking water and use of sewerage;

5.1.9 To prevent misuse of drinking water;

5.1.10 To control pollution of drinking water;

5.1.11 To make essential repairs and maintenance of drinking water and sewerage pipe lines;

5.1.12 To render prompt service through necessary repairs upon receipt by the Corporation of information of no-water in the tap;

5.1.13 To raise its own operating expenses by the Corporation;

5.1.14 To perform all other functions required to carry out the purposes of the Corporation.

6. Powers to Collect Fees and Service Charges :

6.1 The Corporation may determine fees for providing drinking water and service charges for sewerage and water connection etc. and realise them from the concerned persons.

6.2 The time limit for paying drinking water fees and sewerage service charges shall be as prescribed by the Corporation.



6.3 The Corporation may realise from twenty five to fifty percent additional charge from the defaulters who default to pay such fees and service charges within the time limit prescribed for such payment under Subsection 6.2.

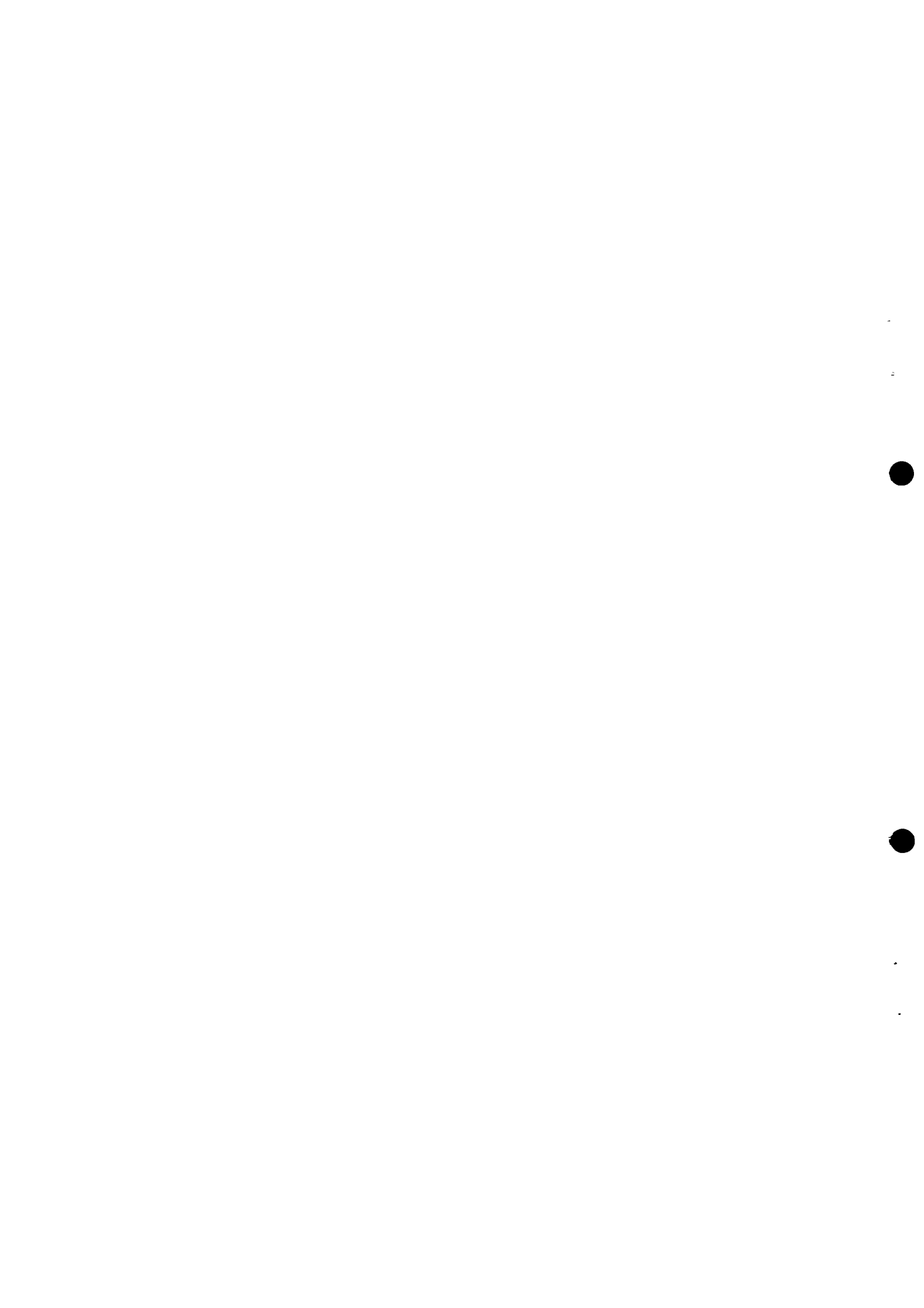
6.4 If any subscriber does not pay the fees, service charge, additional charge or any other amount due to the Corporation within the time prescribed by the Corporation, the Corporation may discontinue the drinking water and sewerage facilities provided to such subscriber by the Corporation.

6.5 If the person discontinued with the facilities under Subsection 6.4 makes payment of a new subscription charges together with the amount due under Subsection 6.3, the Corporation may resume such facilities.

7. Power to Enter into Others' Premises :

If it is required to enter into any person's premises in connection with the functions of the Corporation, the person authorised by the Corporation may enter therein, after giving pre-information to the person currently occupying the house or land.

Provided that in case of a reasonable doubt of misuse or theft of drinking water being committed, no pre-information shall be required to be given while the Chairman or an officer of the Corporation authorised by him enters, in course of investigation, in such premises at any time excepting at night between the time after sunset and before sunrise.



8. Constitution of Executive Committee :

8.1 An Executive Committee is hereby constituted consisting of the following members for the operation, supervision and management of the functions of the Corporation --

**8.1.1 A person appointed by His Majesty's Government
..... Chairman**

**8.1.2 Representative, Ministry of Housing and Physical
Planning (Gazetted First Class).....
Member**

**8.1.3 Representative, Ministry of Finance (Gazetted First
Class) Member**

**8.1.4 Joint Zonal Commissioner, Bagmati Zone
Member**

**8.1.5 One Pradhan Panch from Kathmandu or Lalitpur Town
Panchayat designated by His Majesty's Government
Member**

**8.1.6 One Pradhan Panch from other Town Panchayats designated
by His Majesty's Government Member**

**8.2 If a General Manager is appointed in the Corporation, the
General Manager shall act as the Member-Secretary of the
Committee and if no such General Manager is appointed in the
Corporation, the Chief Engineer of the Corporation shall act
as the Member-Secretary of the Committee.**

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8.3 His Majesty's Government may, if it deems necessary, make necessary change or alteration in the membership of the Executive Committee through a notice published in the Nepal Gazette.

8.4 The Committee may, if it deems necessary, invite any national or foreign expert or advisor (consultant) to attend the meeting of the Executive Committee as observer.

9. Procedures of Meeting of Committee :

9.1 The meeting of the Committee shall be held as required on the date, time and place as appointed by the Chairman.

9.2 The quorum for the meeting of the Committee shall be deemed to have constituted by the presence of more than fifty percent members of the total membership of the Committee.

9.3 The meeting of the Committee shall be presided over by the Chairman and on his absence, the member selected by the members among themselves shall preside over such meeting.

9.4 In the meetings of the Committee, the opinion of the majority shall be deemed valid and in case of any tie of votes, the Chairman shall have the casting vote.

9.5 The Member-Secretary of the Committee shall authenticate the minutes of the Committee.

9.6 The Committee itself shall lay down other procedures relating to the meetings of the Committee.

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10. Constitution of Sub-committees :

10.1 The Committee may constitute several sub-committees as required for the efficient operation of its functions.

10.2 The Committee may, if it deems necessary, may assign the sub-committees constituted outside Kathmandu Valley under Subsection 10.1 to execute drinking water projects on the basis of financial and managerial autonomy.

11. Appointment of Chairman and General Manager :

11.1 His Majesty's Government shall appoint the Chairman of the Corporation.

11.2 His Majesty's Government may, if it desires so, appoint the General Manager of the Corporation.

11.3 The tenure of office of the Chairman and the General Manager shall be as fixed by His Majesty's Government.

11.4 The remuneration, conditions of service and privileges of the Chairman and General Manager shall be as prescribed.

12. Provisions on Employee :

12.1 The Corporation may appoint employees as required.

12.2 The remuneration, conditions of service and privileges of the employees of the Corporation shall be as prescribed.

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13. Prohibition on Members of Committee and Employees of Corporation :

Any member of the Committee, employee of the Corporation and Advisor shall have no direct or indirect partnership in any contractual works with the Corporation.

14. Funds of Corporation :

14.1 The Corporation shall have a separate fund of its own. The fund shall contain the following monies:-

14.1.1 Monies received from His Majesty's Government;

14.1.2 Monies received from any foreign government, or international or foreign agencies;

14.1.3 Monies earned from movable and immovable properties of the Corporation;

14.1.4 Fees and service charges received for rendering drinking water and sewerage facilities and monies received in additional charge and fines imposed.

14.1.5 Monies received by the Corporation from any other sources.

14.2 All monies of the Corporation shall be deposited in accounts opened at Nepal Rastra Bank or at other commercial Banks.

14.3 All expenses to be incurred by the Corporation shall be charged to the funds provided in Subsection 14.1.

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14.4 The operation of accounts of the Corporation shall be as prescribed.

15. Books of Account and Audit of Corporation :

15.1 The books of account of the Corporation shall be kept in the forms and manners as determined by the Committee with the approval of His Majesty's Government.

15.2 The audit of the Corporation shall be performed by the Department of Auditor General.

15.3 His Majesty's Government may, if it so desires, check or order to be checked at any time the documents and ledgers of the accounts and cash and kinds of the Corporation.

16. Acquisition of Lands :

16.1 Any land required by the Corporation for the following purposes may be acquired by His Majesty's Government according to the prevailing laws:-

16.1.1 For the construction of reservoir;

16.1.2 For the construction of any infrastructure relating to drinking water and sewerage;

16.1.3 For the performance of any work necessary to achieve the purposes of the Corporation.



17. Powers to Lay Pipelines Through any Public or Private Premises:

17.1 If the Corporation, while implementing plans relating to the drinking water and sewerage, deems it essential to lay pipelines for drinking water or sewerage from one place to another through any public or private premises, it may lay such pipelines according to the plan.

17.2 While laying pipelines for drinking water or sewerage under Subsection 17.1, the Corporation shall lay such pipelines causing as less as possible damage to the public or anyone's private premises.

17.3 The Corporation shall pay compensation to the owner of the premises for the damages caused while laying the pipelines for drinking water or sewerage under Subsection 17.1 or shall repair such damage to the premises so as to bring it to the original form.

18. Prohibited Acts :

18.1 No one shall commit or abet to commit any of the following acts:-

18.1.1 To destroy or break or cause any kind of damage on the source of water, reservoir or on any infrastructure relating to the drinking water or sewerage;

18.1.2 To pollute the drinking water;

18.1.3 To connect tap from the drinking water pipeline without permission of the Corporation;



18.1.4 To consume water by removing the consumption meter of the drinking water without informing the Corporation;

18.1.5 To draw water through installation of any machine on the drinking water pipeline;

18.1.6 To break or destroy the consumption meter of the drinking water;

18.1.7 To connect the sewerage outlet on the sewerage pipeline of the Corporation without permission of the Corporation or to throw or place any solid substance into the sewerage causing to choke the sewerage;

18.1.8 To steal or break or destroy or cause any damage to drinking water or sewerage pipeline managed by the Corporation;

18.1.9 To demolish or destruct or to cause damage by any means to sewerage or sewer trap;

18.1.10 To resist or interfere on the duties to be performed by the Corporation relating to Drinking water and sewerage.

19. Penalty :

19.1 Any person contravening the provisions of Subsection 18.1.1 or abetting to do so shall be punished, including realisation of the cost thereof, with a fine of upto ten thousand rupees or an imprisonment of upto five years or both.

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19.2 Any person who commits or abets to commit any of the following acts, may be punished as follows by the Corporation or by the sub-committee constituted under Section 10, as designated by the Corporation:-

19.2.1 To any person contravening the provisions of Subsection 18.1.2 or abetting to do so, a fine upto ten thousand rupees;

19.2.2 To any person contravening the provisions of Subsection 18.1.3 or abetting to do so, a fine upto five thousand rupees;

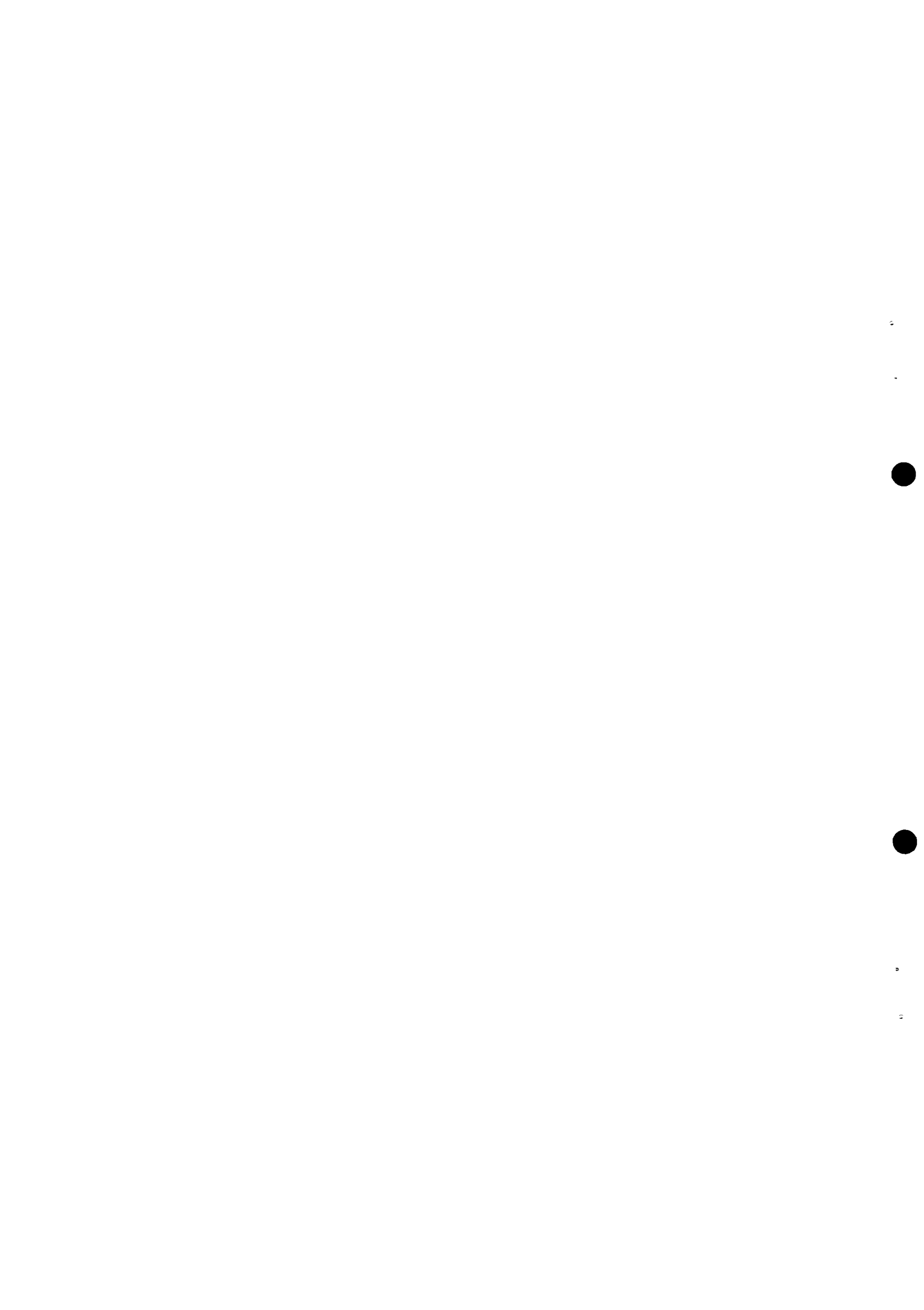
19.2.3 To any person contravening the provisions of Subsection 18.1.5 or 18.1.6 or abetting to do so, a fine upto three thousand rupees;

19.2.4 To any person contravening Subsection 18.1.7 or abetting to do so, a fine upto two thousand rupees;

19.2.5 To any person contravening the provisions of Subsection 18.1.8 or 18.1.9 or abetting to do so, a fine equal to the cost of the material so theft, destroyed or damaged and an additional fine upto two thousand rupees;

19.2.6 To any person contravening the provisions of Subsection 18.1.4 or 18.1.10 or abetting to do so, a fine upto one thousand rupees;

19.2.7 To any person contravening the provisions of this Act and the Bylaws made hereunder, other than those abovementioned, or abetting to do so, a fine upto one thousand rupees according to the gravity of offence.



20. Appeal :

Any person disagreeing to the order of punishment given under Subsection 19.2 may file an appeal against such decision at the Zonal Court within 35 days of the receipt of such order of punishment and the decision of the Zonal Court shall be final.

21. Realisation as the Governmental Dues: If the fees, service charge or additional charge levied under this Act or the amount of fine imposed by the Corporation or Sub-committee under Section 19 is not paid by the concerned person, the Corporation may realise such fees, service charge, additional charge or amount of fine from such person in a manner similar to governmental dues.

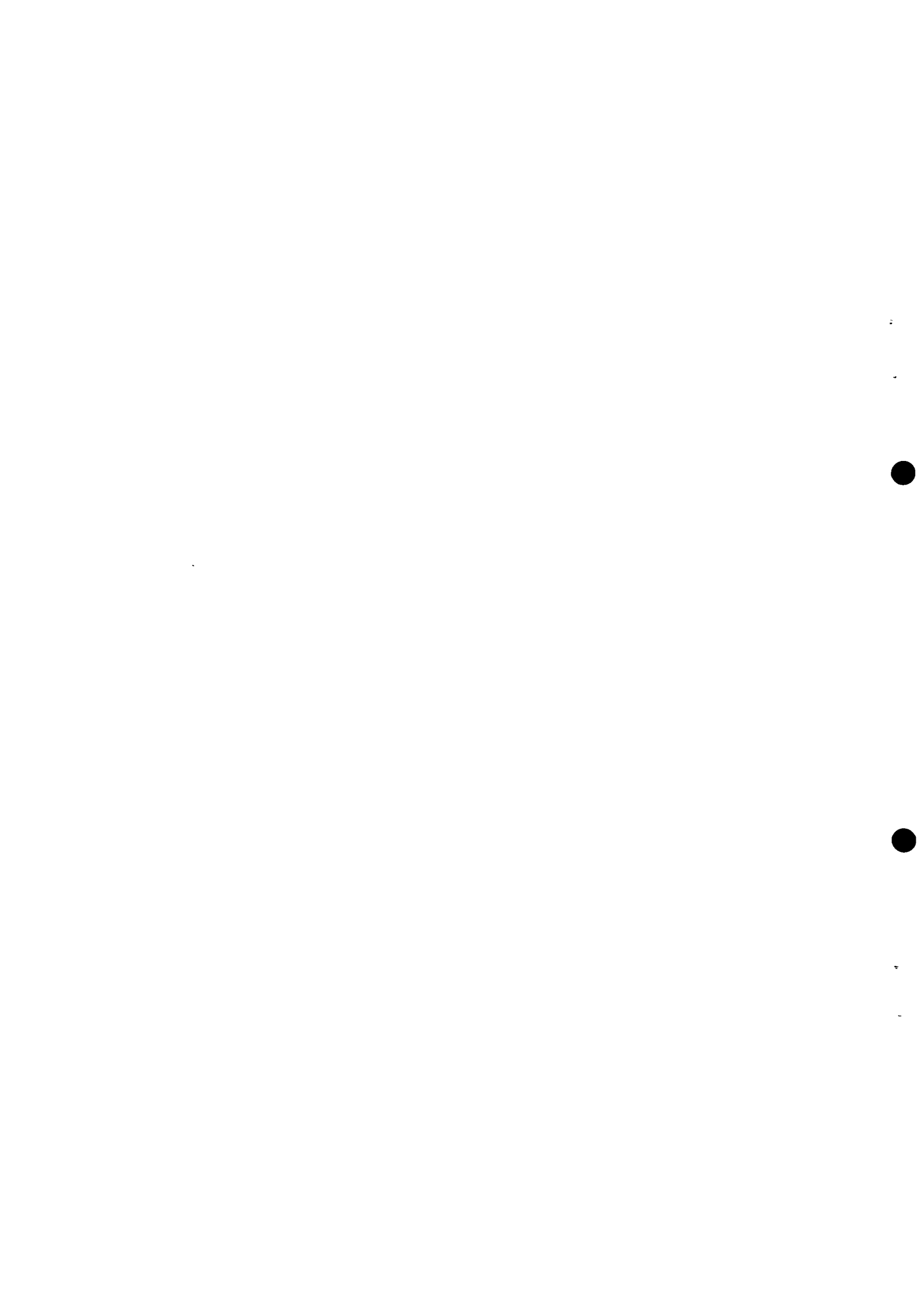
22. Delegation of Powers :

22.1 The Committee may delegate, as required, its powers vested in it by this Act or Bylaws made hereunder to the Chairman, any member of the Committee or Sub-committee.

22.2 The Chairman may delegate, as required, its powers to any officer or employee of the Corporation.

23. Powers of His Majesty's Government to issue Directives :

His Majesty's Government may issue directives to the Corporation from time to time. It shall be the duty of the Corporation to abide by such directives.



24. Powers of His Majesty's Government :

24.1 If the Corporation performs or intends to perform any act which is contrary to this Act, His Majesty's Government may order the Corporation to stop it.

24.2 His Majesty's Government may dissolve the Corporation at any time, if it decides that the Corporation has completed its functions or it has not carried out its functions, orders or directives or its existence is not required.

24.3 If the Corporation is dissolved under Subsection 24.2, all rights and liabilities of the Corporation shall divest upon His Majesty's Government.

25. Liaison with His Majesty's Government :

While keeping liaison with His Majesty's Government, the Corporation shall do so through the Ministry of Housing and Physical Planning.

26. Powers to Frame Bylaws :

The Corporation may, subject to the provisions of this Act, frame Bylaws with the approval of His Majesty's Government for the proper management of its internal functions.

27. Dissolution :

27.1 After the commencement of this Act, the Drinking Water and Sewerage Corporation constituted under the notification of His Majesty's Government, Ministry of Water Resources published in the Nepal Gazette Part III, Volume 34, No. 14, dated 2041 Shrawan 1 (July 16, 1984) shall stand dissolved.

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27.2 All functions carried out by the Corporation dissolved under Subsection 27.1 and all rights and liabilities of such Corporation shall divest upon the Corporation established under this Act.

27.3 All employees working in the Corporation dissolved under Subsection 27.1 shall remain transferred in the Corporation established under this Act.

ROYAL SEAL OF ENACTMENT AFFIXED ON - 2046/7/11/6.

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ANNEX II

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DRINKING WATER SUPPLY PROJECTS IN KHOTANG DISTRICT

INTRODUCTION :

Most of the construction works for drinking water supply projects in Khotang district are completed by different agencies such as UNICEF, BRITISH Project, British Welfare Society, and District Panchayat for providing drinking water facilities to many village panchayats.

The main source of the water are mostly rivulets and spring-water. Lack of sufficient water is the main problem to run the project smoothly. The drinking water is distributed to the users directly from the storage tank without any treatment. There are only few cases of water borne diseases.

There is no system of water charge to be paid by the water users. There is no system of private taps and the taps are installed only in the public places.

The projects have been receiving financial supports from different agencies depending upon which agency has completed the project. The budget allotment of the project is said to be sustainable for meeting of maintenance of works. The projects, undertaken by foreign agencies are in the process of handing over to the District Drinking Water Office.

FACTS IN ISSUE :

In Khotang district there are a few projects which seem to be very important in view of water rights problem. They are as follows :



1. Khalde Drinking Water Supply Project :

Khalde Drinking water Supply Project is located at Khalde Village Panchayat in Khotang district. This project was first initiated by the District Panchayat Secretariat. The project serves around 1500 people. The total population of the village is estimated to be 3,703 according to the District Panchayat Secretariat.

Four spring-waters of Khalde Panchayat are the main sources of this project. A permanent collection tank is constructed near the source. The piping material used is mostly polythene. At the initial stage of the project all four springs were used by the project, and later when some other parts of the panchayat were not served by the project, one of a springs among these four was separated after a long conflict among the people. As some of the population of the village were out of the reach of the services, the project was then about to be revised by the District Panchayat Secretariat. But instead of revising, a new project has been proposed and the District Panchayat has approved to run a completely separate project under UNICEF programme. This separate Project undertaken by UNICEF is under construction.

The conflict on the source of the water among the people has been solved and the new project has taken its smooth way. But the people of the village still say that it would have been rather better if the old project has been extended or rehabilitated by the District Panchayat which had first initiated the Project.

No regular water tax is charged in this Project. However, some fund is raised in the form of service charge. No default is noticed to date. As all the outlet taps are installed in

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public places, the villagers have less chances of misusing water. However, breaking of pipes has often occurred.

SOLUTION : It has been realised that the project lacks proper regulation relating to water use. In absence of systematic co-ordination, different projects have been initiated in the same source, where a Project would have served for the total population if a few additional amount been spent to the project. In the meantime, the District Panchayat which hold the responsibility to prepare District Development Plan should take much attention while approving the project in the same area where a project is already existing.

2. Rajapani Drinking Water Supply Project, Khotang :

Rajapani Drinking Water Supply Project is a proposed project which has not yet been implemented because of the conflict between the people of Rajapani Village Panchayat and Bijaykharka Village Panchayat. This proposed project is a central level project which has been approved by the District Panchayat Secretariat.

At the original stage of this proposed project Lipe Khola (stream) has been identified as a major water source of this project. The Lipe khola which runs through the area of Bijaykharka Panchayat has been utilized by its people since long time for drinking and irrigation purposes which is quite enough for them.

Rajapani has been facing serious problem of drinking water, though they have one or two spring-water source which are very far away from the vicinity. The District Panchayat had put the proposed project in its District Development Plan but the local people who are using the source for many years opposed

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the proposal. From then the budgetary allocation has been always made for the project though nothing has been done so far in implementation.

The people of Rajapani Village have suggested District Panchayat Chilling khola as an alternative water source which is almost thirty kilometre far away from the village. Since the settlement is scattered, it is obvious that to provide the facilities to each of them is a major task and the costs no doubt would be very high. Hence, the initiation is somehow frustrated, and the proposed project has not been cancelled nor it has been revised.

SOLUTION : In absence of definite water use regulation it would be very difficult to handle the project which linked the physical boundary of more than one panchayat. If there is a provision of priority between drinking water use and irrigational use, it would have been easy even though the "question of rights" would make it little more complex, as in such condition, one should give better consideration on the need of majority rather than of minority. In doing so, one should be more careful of the adverse impact caused to minority by favouring majority.

3. Extensive Drinking Water Supply Project :

This is a proposed central level project and is yet to be started. The location of the project is Haleshi Mahadevsthan. The project would serve almost ten village panchayat of Area No. 5 of the Khotang district. The Haleshi Mahadevsthan area which covers ten village panchayats are very dry areas. The main source of the scheme is Locha Khola spring and Lamjung Khola spring.

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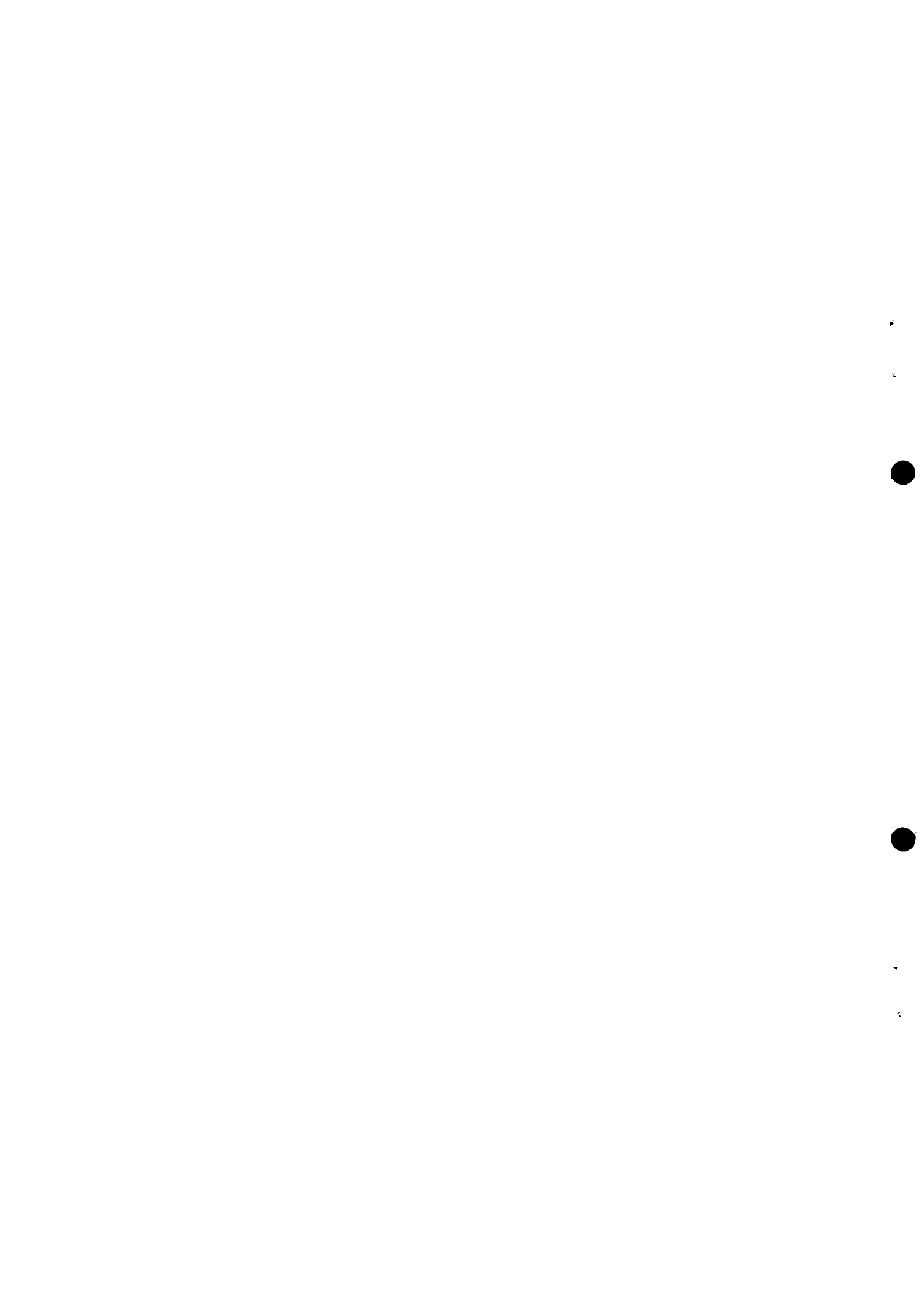


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disputes arises from time to time. One of the main cause of the conflict is the lack of co-ordination between the agencies which undertake the construction of drinking water project separately. If a single agency is made responsible for water supply, water works and reclamation works, it would somewhat lesser the chances for unnecessary disputes.

Very recently the District Drinking Water Office has been established in all the districts of the country which is responsible for delivering drinking water to the villages. It is also responsible for maintenance or extension of water supply network to all the rural villages. This office should be given the charge thereof where the plan is approved. This would control unnecessary pressure to the limited water source. Therefore, a system of permits should be introduced to authorize them who want to undertake projects, other than the government agency.



DRINKING WATER SUPPLY PROJECTS IN DADELDHURA DISTRICT

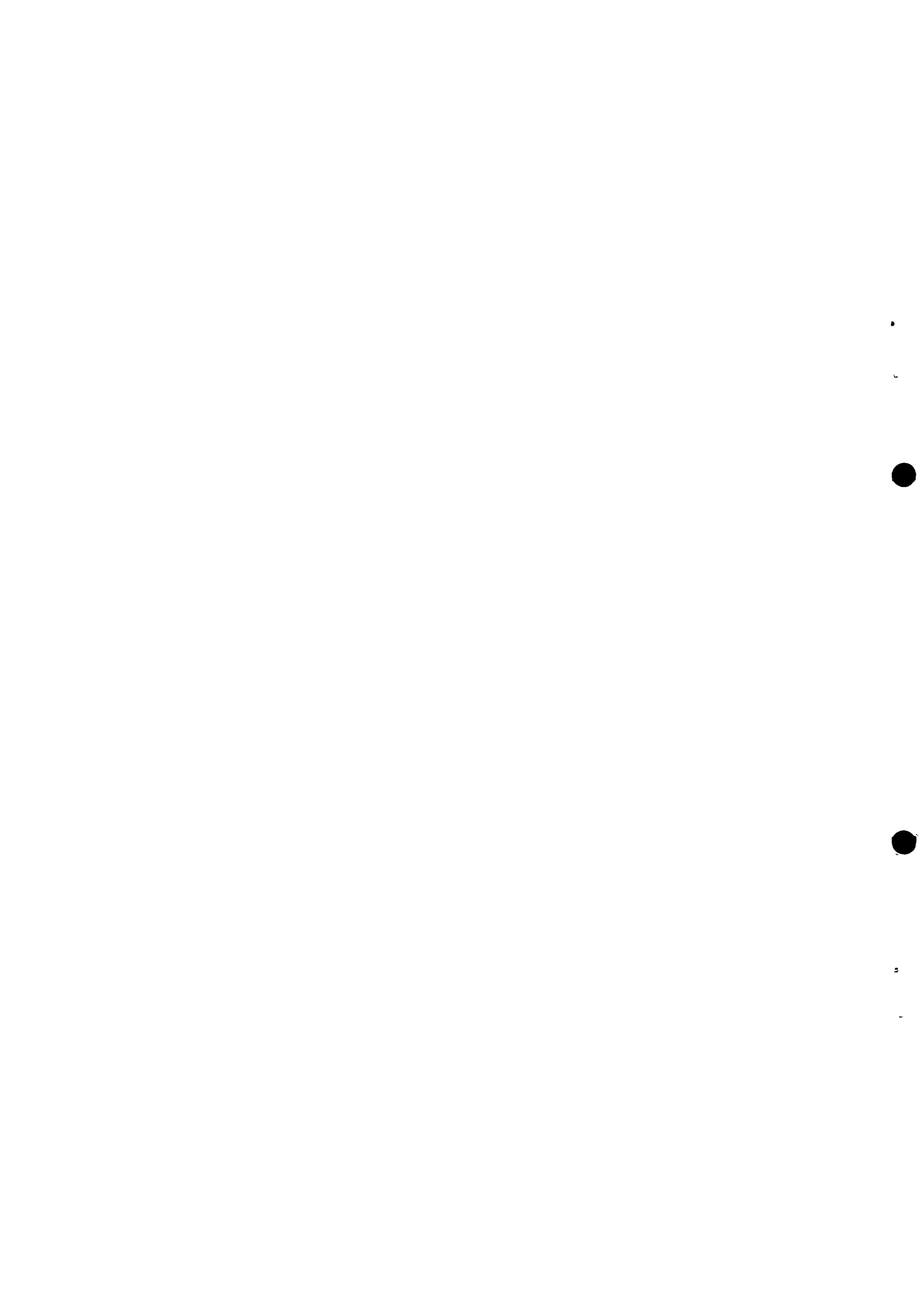
INTRODUCTION

Drinking water projects in the Dadeldhura district have been running by both national and international agencies since 14 years back. District Panchayat and District Drinking Water Office are the major national agencies while UNICEF and Asian Development Bank are the major international agencies involved in providing drinking water facilities to many Village Panchayats of the District. About 53 percent population of the district are getting piped drinking water.

Stream, rivulets, spring water are the major source of drinking water in the district. Water is distributed directly from the reservoir tank without any treatment. The diseases occur especially in the dry season when water becomes very scarce and people even use the dirty water.

There is no system of installing private taps in the rural area except in the large projects of district headquarter. The public tap is installed between 200-250 population. There is no system of water charge to be paid by the water users. However, in the projects run by District Panchayat, villagers are requested to pay water charges to the Chaukidar who takes care of the intake and reservoir tank.

All the large projects are maintained by the government budget. However the budget is noted to be insufficient in most of the cases. Small projects run by UNICEF are usually maintained by villager themselves.



FACTS IN ISSUE

Problem of water right occurs when initiating any drinking water projects in the district. However, the magnitude of problems varies upon the availability of water in the source and also on traditional uses and political interest of people. There are a few Projects where the water right problems do exist. They are as follows:

(1) Ajaymeru Drinking Water Project

Ajaymeru Drinking Water Project was initiated by the District Drinking Water Project in 1986/87 after long effort of the people of Ajaymeru Village Panchayat, the adjoining panchayat of Dadeldhura. The project aims to provide safe drinking water to about 8700 inhabitants of Ajaymeru village panchayat. The estimated cost of accomplish this project is Rs. 85,00,000/- of which 14 percent is already invested to construct 4 intake points and guard quarter near reservoir tank. The amount was made available by the Asian Development Bank.

Two rivulets located in the eastern part and two in the western part of Ajaymeru are the main sources of this project. The project has been postponed after intakes and guard quarter construction due to the conflict over the sources between the people of Ajaymeru and Naulakot (Bhadrapur Village Panchayat) village.

The Naulakot Irrigation Project financed by HMG/N was initiated in 2038 to provide irrigation facility to 50 ha. of land, covering some 121 farm families of Naulakot village. Betal Khola the source of this irrigation project is fed by many rivulets among which two rivulets diverted for drinking water purpose are most important in this

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regard. The conflict is regarding these two rivulets. Considering the irrigation project and the drinking water needs the District Irrigation project and the drinking water needs the District Irrigation and Drinking Water Office have mutually decided to divert only 50% water from the above two rivulets without hampering the irrigation project. But the people of Naulakot are reluctant to divert the source for drinking water and are advocating the water right, since they are using this source for many years.

There was no technical or legal problem to continue the drinking water project. But the people of Naulakot once destroyed one of the intake point and filed a case in the court against concerning officials demanding their right to be protected.

The authority is not even able to punish the identified destroyer of the intake due to political pressure. The case of Ajaymeru is rather more political than any other issues.

(2) Bhadrapur Drinking Water Project

Bhadrapur Drinking Water Project is completely a government financed project initiated in the year 2044/45 with a view to provide piped drinking water to about 6000 inhabitants of Bhadrapur Village Panchayat. The cost estimated to accomplish the project is Rs. 44,62,000 about 20 percent of which is already invested for constructing intake point and reservoir.

This project has been suffering also from the conflicts over sources. About 6 persons of Meta Village have been using the same source "Simaradi Khola" from where the project authority has planned to divert water for providing drinking water facilities. The project was initiated after details

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feasibility study and mutual understanding with the villagers who were using the source from the very beginning. The villagers were convicted with the fact that drinking water project would not prohibit them from utilizing the irrigation facilities because the source is sufficient to utilize for both the facilities. But right after the completion of the construction work they filed the case in the court against the concerning officials. The causes of conflicts and cases are similar to those of Ajaymeru Project.

(3) Manilekha Drinking Water Project

Manilekha Drinking Water Project has been initiated by District Drinking Water Project to provide drinking water to 4600 people of Manilekha Panchayat. The estimated cost of the project is about Rs. 67,00,000/-.

This project also faced conflicts right from the beginning. About 15 household of Manilekha are irrigating about 5 ha. of land traditionally from the source "Changal and Leudali Khola". Available water in the source is estimated to be sufficient for both the purposes. However, the beneficiaries of the irrigation system are reluctant to allow water to be diverted for drinking water purpose.

Since majority of the people are in need of drinking water and there is no alternate source, the project authority conducted a survey with the assistance of local administration. Eventhough no development has been made so far and the concerning officials are hesitant even to start further works to complete the proposed project due to the political presume.

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CONCLUSION AND RECOMMENDATIONS

The above case studies indicate that conflict over the source in Dadeldhura district occurs mainly due to the conflicts of rights over the sources, scarcity of water, different type of traditional uses, lack of alternative sources and political interest of the people. Further, unclear legal provisions, lack of co-ordination among the project authorities etc. have attributed the problem to be more rigid. Following measures could be the solution to entercount with the problem foreseen in the use of water resource:

- (1) Priority should be given to drinking water.
- (2) A separate act relating to drinking water should be framed.
- (3) Local administration should be given more authority to control political pressure.
- (4) A single agency should be made responsible for water supply and water works.

