
**WATER RESOURCES (REGULATION
AND MANAGEMENT) ACT, 2010**

(Act No. XXI of 2010)

**THE JAMMU AND KASHMIR WATER RESOURCES
(REGULATION AND MANAGEMENT) ACT, 2010**

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**THE JAMMU AND KASHMIR WATER RESOURCES
(REGULATION AND MANAGEMENT) ACT, 2010**

(Act No. XXI of 2010)

[Received the assent of the Governor on 23rd October, 2010 and published in Government Gazette dated 25th October, 2010].

An Act to consolidate the law relating to use of water, the measurement, construction, control and management of works with respect to water storage, conservation and protection, the irrigation, water supply, drainage, flood control and prevention, the improvement in the flow of water, the protection and improvement in the physical integrity of water courses, lakes and springs, the safety and surveillance of dams, the establishment of the State Water Resources Regulatory Authority for regulating water resources, ensuring judicious, equitable and sustainable management, allocation and utilization of water resources, fixing the rates for use of water and matters connected therewith or incidental thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-first Year of the Republic of India as follows :—

CHAPTER I

Preliminary

1. *Short title and commencement.* —(1) This Act may be called the Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010.

¹[(2) It shall come into force from such date as the Government may by notification in the Government Gazette appoint :]

Provided that different dates may be appointed for different provisions or Chapters of this Act.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

- (a) “Act” means the Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010 ;
- (b) “Authority” means the J&K State Water Resources Regulatory Authority established under section 139 of the Act ;

1. Enforced vide SRO-415 dated 10.11.2010 w.e.f. 10th November, 2010.

- (c) “Assistant Executive Engineer” means an Assistant Executive Engineer in-charge of the concerned wing of PHE, Irrigation and Flood Control Department exercising control over a sub-division of an irrigation, flood control, hydraulic work or ground water ;
- (d) “bed material” mean all kinds of material which is extracted from the bed of any water source in any form ;
- (e) “beneficiary” means a person who derives benefits from the usage of water for drinking purposes, irrigation, drainage, generation of electricity or extraction of bed material from any water source, navigation or any other direct or indirect usage ;
- (f) “category of use” means use of water for different purposes such as for, generation of electricity, running of water mills, agricultural, irrigation, horticulture, drinking water (domestic, industrial or commercial), navigation and institutional use etc. ;
- (g) “communication pipe” means any pipe or system of pipes, alongwith all fittings thereto, by means of which water is supplied to any user, licensee, premises, habitation, village or area from the main and includes a connection pipe, service pipe, meter or other fittings ;
- (h) “connection pipe” means any water pipe from a ferrule to stopcock connecting the main with the service pipe ;
- (i) “consumer” means any person getting the benefit of water supply provided by the Government or any local body or licensee, as the case may be ;
- (j) “culturable command area” means all lands which are fit for cultivation under irrigable command of irrigation work ;
- (k) “dam” means works that include a barrier whether permanent or temporary which has the potential of impounding, diverting or controlling water for multipurpose projects or schemes like generation of electricity, irrigation or any other use ;
- (l) “drainage works” include—
 - (i) channels, either natural or artificial, for the discharge of waste or surplus water, and all works connected with or auxiliary to such channels ;

- (ii) escape channels from an irrigation work, dam, weir, embankment, flood embankment, sluice, groin and other works connected therewith, but does not include works for the removal of sewage ;
- (iii) any work in connection with a system of reclamation constructed or maintained by the Government for the purpose of drainage of an area ; and
- (iv) all field drains ;
- (m) “drinking water” means water for consumption or use by human population for drinking or other domestic purposes, which shall include—
 - (i) consumption or use of water for cooking, bathing, washing, cleansing and other day-to-day activities ; and
 - (ii) water meant for consumption by the livestock ;
- (n) “electricity” means electrical energy generated by way of usage of water from any water source flowing within the territory of the State ;
- (o) “embankment” means and includes every bank, dam, wall and dyke made or used for retaining water upon any land, every sluice, spur, groyne, training wall or other work annexed to, or portion thereof made or erected for the protection of any such embankment, or of any land, from erosion or over flow by, or of, any water source, tide or wave and also all buildings and roads, intended for purpose of inspection and supervision of such embankments ;
- (p) “Executive Engineer” means the Executive Engineer of the concerned wing of PHE, Irrigation and Flood Control Department exercising control over a division of PHE, irrigation, flood control, hydraulic work or groundwater ;
- (q) “field channel” means a channel, and everything appurtenant to it, constructed by any owner or occupier or beneficiary, or by the Government on their behalf and at their cost, to serve the various fields within a block and includes existing water channels constructed or maintained by the owners or occupiers or beneficiaries.

Explanation:—“existing” means existing at the time of the commencement of the Act ;

- (r) “field drain” includes the drains, escape channels and other similar works constructed and maintained by the owners or occupiers or beneficiaries or by the Government on its own cost or on behalf, and at the cost, of such owners or occupiers or beneficiaries ;
- (s) “flood basin” means the area which is required for carrying the flow of the floods ;
- (t) “flood embankment” means any embankment constructed or maintained by the Government in connection with any system of irrigation or reclamation works for the protection of lands and other infrastructure from inundation or which may be declared by the Government to be maintained in connection with any such system, and includes all groynes, spurs, dams and other protective works connected with such embankment ;
- (u) “flood water” means water overflowing or erupting or that has overflowed or erupted from a water source onto, or over, land or built up area which is not submerged when such water source flows between, or is contained within, its bed and banks ;
- (v) “Government” means the Government of the State of Jammu and Kashmir ;
- (w) “hydraulic works” include—
 - (i) all reservoirs, tanks, dams, weirs, canals, barrages, channels, domestic or commercial water supply works, pipes, ponds, spring ponds, spring channels, aqueducts, sluices, gates, outlets, washouts, pumping installations, flood embankments or other flood protection works constructed, maintained or controlled by the Government for the usage or storage of water ;
 - (ii) all works, embankments, structures, control structures including outlets, supply and escape channels connected with such reservoirs, tanks, dams, weirs, canals, barrages, channels, domestic or commercial water supply works, pipes, ponds, spring ponds, spring channels, aqueducts, sluices, gates, outlets, washouts, pumping installations, and all roads constructed for facilitating the construction or maintenance

of such reservoirs, tanks dams, weirs, canals, barrages, channels, domestic or commercial water supply works, pipes, ponds, spring ponds, spring channels, aqueducts, sluices and pumping installation ;

- (iii) all drainage works, flood embankments, other flood protection works, wells, water courses and field channels ;
- (iv) all lands held by the Government for the purpose of such reservoirs, tanks, dams, weirs, canals, barrages, channels, domestic water supply works, pipes, ponds, spring ponds, spring channels, aqueducts, sluices, pumping installation and all buildings, machinery, fences, gates and other erections upon such lands ;
- (v) zamindari khuls ; and
- (vi) all lands, roads, cross drainage, catch water drains, pillars, boundary pillars, reference pillars, buildings, machinery, fences, gates, other erections, trees, crops, plantations or other produce occupied by and belonging to Government for the purposes of irrigation works ;
- (x) “head works” mean the work relating to construction of any dam, weir, barrage or reservoir and all works appurtenant thereto, channel, structure, building, well, bore, tunnel or machinery used for, or in connection with, the storage, control, conveyance or distribution of water for different purposes ;
- (y) “land under irrigable commands” means such lands as are irrigated or capable of being irrigated by flow or lift from any hydraulic work being under its command and shall include also such cultivated land which received, in the opinion of the Assistant Executive Engineer concerned, by percolation or otherwise from an hydraulic work or by indirect flow, percolation or drainage from, or through, adjoining land advantage beneficial to the crop ;
- (z) “licensee” means an person, group of persons, firm, corporation, company, society, board, local body, government department or any other authority authorised under section 97 of the Act to avail the facility of usage of water from any source, or extraction of bed material with location thereof, within the State ;

- (za) “licensing authority’ means—
- (i) in relation to clause (a) of sub-section (1) section 91, the Government ; and
 - (ii) in relation to clauses (b) to (e) of sub-section (1) of section 91, the—
 - (a) Chief Engineer concerned Incharge PHE in respect of drinking water supply and groundwater ; and
 - (b) Chief Engineer concerned Incharge Irrigation & Flood Control in respect of irrigation, flood control and embankment schemes ;
- (zb) “local body” or “local authority” means a municipal corporation, municipal committee, municipal council or a halqa panchayat constituted under any law for the time being in force and includes such other body or authority as the Government may, from time to time, notify ;
- (zc) “main” means a pipe laid by the department or a licensee, as the case may be, for the purpose of giving a general supply of water as distinct from a supply to individual consumers and includes any apparatus used in connection with such a pipe ;
- (zd) “notification” means a notification published in the Government Gazette and the term “notify” shall be construed accordingly ;
- (ze) “notified area” means the area notified as such under sub-section (1) of section 111 ;
- (zf) “occupier” includes an occupier of land or premises or other property who cultivates or possesses the same for the time being ;
- (zg) “on-farm development” includes any of the following works :—
- (i) land-levelling and land-shaping, including realignment of field boundaries and terracing ;
 - (ii) providing of falls, culverts and farm roads in the fields ;
 - (iii) land reclamation by use of engineering, biological and chemical measures, including leaching ;

- (iv) contour bunding and nallah bunding ; and
- (v) such other work as may be necessary or incidental to the development of land or ground or flow of water and for optimising the utilisation of land and water resources ;
- (zh) “outlet” includes an opening constructed in an irrigation work through which water is delivered into a water course or field channel or directly on to any land ;
- (zi) “owner” means every person having interest in the ownership of land, premises or other property, and all rights and obligations which attach to an owner under the provisions of the Act shall attach jointly and severally to every person having such joint interest in the ownership and includes—
 - (i) every person who is entitled for the time being to receive any rent in respect of such land, premises or building ;
 - (ii) a manager on behalf of any such person ;
 - (iii) any agent for any such person ; and
 - (iv) an occupier ;
- (zj) “permit” means a document issued by the prescribed authority under the Act authorising use of water by the holder thereof ;
- (zk) “premises” means any building or part of a building or out house but shall not include garden, ground or lawn, if any, appurtenant to a building or part of a building ;
- (zl) “prescribed” means prescribed by rules made under the Act ;
- (zm) “prescribed authority” means—
 - (i) in relation to drinking water supply and groundwater, the Chief Engineer concerned Incharge PHE ; and
 - (ii) in relation to irrigation, flood control and embankments, the Chief Engineer concerned Incharge Irrigation and Flood Control.

- (zn) “regulations” mean the regulations made under section 198 ;
- (zo) “river basin” means the river system and the adjacent land, which is separated from another river basin by a physical boundary ;
- (zp) “rules” mean the rules made under section 197 ;
- (zq) “section” means a section of the Act ;
- (zr) “service pipe” means any pipe other than the connection pipe beyond the stop-cock by means of which water is supplied to any consumer or premises ;
- (zs) “sewage effluent” means effluent from any sewerage system or sewage disposal works and includes sullage from open drains ;
- (zt) “specified” means specified under regulations framed by the Authority under section 198 ;
- (zu) “Superintending Engineer” means the Superintending Engineer of the concerned wing of PHE, Irrigation and Flood Control Department exercising control over a circle of an irrigation, flood control, hydraulic work or groundwater ;
- (zv) “trade effluent” includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any trade or industry, other than domestic sewage ;
- (zw) “underground water” means water under the surface of earth regardless of the geologic structure in which it is standing or moving, but it does not include water flowing in artificial underground streams ;
- (zx) “user” means any person, group of persons, local body, government department, board, company, corporation, society etc. using water for drinking purposes, commercial, industrial or institutional, irrigation, power generation, running of water mills, agriculture, or any other purpose from any source of water ;
- (zy) “vessel” includes boats, rafts, timber and other floating bodies ;
- (zz) “water” means natural resource flowing in any river, stream, tributary, canal, nallah or any other natural course of water or situated upon

the surface of any land like lake, pond, lagoon, swamp, spring or ground water but does not include fish ;

(zza) “water channel” means the length of a channel between an outlet and a field channel, built or constructed to carry water from an outlet to any block of land ;

(zzb) “water connection” includes—

(i) any tank, cistern, hydrant, stand-pipe, meter or tap situated on any premises or property and connected with a main or the distribution pipe ; and

(ii) the water pipe connecting such a tank, cistern, hydrant stand pipe, meter or tap with such main or distribution pipe ;

(zzc) “water course” means any river, tributaries, nallah, stream, canal, khad, flood channel, diversion channel, outlet, natural drainage or any other means of flow or drainage of water whether perennial or seasonal ;

(zzd) “water mills” include jandar, gharat and any other kind of mill worked by water of a river, brook or zamindari khul (a small water channel) ;

(zze) “water source” means a river and its tributaries, stream, nallah, canal, spring, pond, lake, water course, underground water or any other source from which water becomes available for use but does not include a shallow well in any private land for domestic use of the owner thereof ;

(zzf) “water supply” means supply of water to any consumer or a licensee for its use for drinking purposes and other domestic use or for use in any trade or business, gardening exclusively, irrigation, fountains, swimming bath, public bath or for any ornamental or mechanical purpose or for use at restaurants, hotels, boarding houses, clubs and washing vehicles etc. ;

(zzg) “water works” mean the water channel including a river, stream, lake, spring, canal, well or other underground water source, pump, galleries, reservoir, cistern, tank or duct whether covered or open, treatment units, sluice, supply main culvert, engine, water truck, hydrants, stand pipe, conduit and machinery, land, building or other

things for supplying or used for supplying water or for protecting sources of water supply or for treatment of water ;

(zzh) “water usage charges” means the rate levied or charged for use of water and fixed under section 128 ;

(zzi) “water usage code” means the water usage specified under section 138 ;

(zzj) “well” means a well sunk for search or extraction of ground water by any person for drawing out water or for carrying out scientific investigations, exploration, development, augmentation, protection or management of ground water and includes open well, dug well, bore well, dug-cum-bore well, tube well, filter point, collector well and infiltration gallery or any of their combinations or variations which would include any such type of structure required for proper development and use of spring water :

Provided that it shall not include the shallow wells where water is extracted by digging a well fitted with a hand operated manual pump, or is withdrawn by any manual device, or sub-surface well upto 20 metre depth ;

(zzk) “zamindari khul” means an irrigation channel which was maintained by the beneficiaries themselves but taken over by the Government for the purpose of remodelling, repair, maintenance, whether before or at the commencement of the Act and includes such of the Khuls which may be taken over by the Government in future for remodelling, repair or maintenance.

CHAPTER II

General

3. *Property of the Government.* —(1) Every water source in the State is, and shall remain, the property of the Government and any proprietary ownership, or any reparian or usage right, on such water resources vested in any individual, group of individuals or any other body, corporation, company, society or community shall, from the date of commencement of the Act, be deemed to have been terminated and vested with the Government.

(2) No person shall use any water from any source (surface or ground), or collect or extract any material from such water sources except in accordance with the provisions of the Act.

4. *State Water Policy and Plan.* —(1) The Government shall, from time to time, prepare the State Water Policy and Plan for the development, management, planning, utilization and monitoring of water resources in the State keeping in view the following objectives :—

- (a) the availability of water ;
- (b) the demand of water for diverse purposes such as domestic, agriculture, power, industry etc ;
- (c) the obligations of the State under any agreement, treaty, judgment or order of any court or tribunal, or statutory obligations under any law for the time being in force in the State ;
- (d) the ecological system and environmental concerns ;
- (e) the conservation and management of available water resources in most economical and sustainable manner ;
- (f) the drought and flood management on scientific basis;
- (g) the planning and management of irrigation and multipurpose projects involving varied socio-economic aspects such as environmental sustainability, resettlement and rehabilitation of project affected people and live-stock etc ;
- (h) ensuring sustainable and conjunctive use of surface and ground water ;
- (i) the development and improvement of ground water and prevention of its over exploitation ;
- (j) promoting efficiency in water utilization for various sectoral purposes ;
- (k) promotion, conservation and augmentation of traditional water resources ;
- (l) use of scientific and innovative techniques for prevention and reduction of pollution of surface and ground water resources and improvement in quality of water ;
- (m) training and capacity building of personnel involved in the management and development of water resource ;

- (n) extension and improvement in irrigation facilities and focus on efficiency in utilization of water for crop production to increase production and productivity in agriculture sector ;
- (o) promotion of crops which require less water as against the water intensive crops ;
- (p) the development of information system to collect, process and provide data regarding the availability of water, actual use of water for different purposes, the future demands of water for diverse purposes, hydraulic data with emphasis on the use of modern technology including remote sensing techniques ;
- (q) the establishment of a network of data banks and data bases using modern computer technology and exchange of data among the various agencies ;
- (r) the development of an effective institutional mechanism for coordinating the management of water resources on a hydrological unit basis with a multi sectoral and multi disciplinary approach ;
- (s) the measures aimed at maximizing retention and minimizing loss of water by watershed management through extensive soil conservation, catchment area treatment, preservation of forests and wet lands, increasing the forest cover, construction of check dams and other ground water recharge measures ;
- (t) non-conventional measures such as artificial recharge of ground water and traditional water conservation practices like rain water harvesting including promotion of roof top rainwater harvesting ;
- (u) encouragement of re-cycling and reuse of water ;
- (v) prioritisation of water allocation broadly in the following order but subject to modification if so warranted by area/situation specific considerations :—
 - (i) drinking water including washing & bathing ;
 - (ii) irrigation ;
 - (iii) generation of electricity ;
 - (iv) ecology ; and

- (v) agro Industries and non-agricultural industries ;
- (w) planning and development of water resources as multi-purpose projects with provision for drinking water as an integral component, irrigation, flood control, navigation, hydroelectric power generation, pisciculture and recreation, wherever possible ;
- (x) integrated and multi-disciplinary approach to planning, formulation, clearance, implementation and monitoring of water projects and schemes ;
- (y) emphasis on drinking water as the first charge on any available water resource ;
- (z) establishment of a network of water quality testing laboratories at the district level to ensure the water quality and regular monitoring in terms of parameters laid down by Government of India from time to time so as to ensure that the health of the people is not affected adversely ;
- (za) generation of public awareness about the standards of water quality and the likely impact on health of people due to possible contamination ;
- (zb) prevention of encroachment on existing water bodies and deterioration of water quality in such water bodies due to pollution ;
- (zc) treatment of effluents, solid/ gaseous wastes which are discharged into the natural streams, water bodies and have the potential of contaminating the ground water through seepage, leaching to acceptable standards before these are released from the industries, institutions, residential and commercial areas ;
- (zd) planning of irrigation projects taking into account the irrigability of the land, cost effective irrigation options possible from all available sources of water and appropriate irrigation techniques for optimizing water use efficiency ;
- (ze) preparation of basin master plan to assess the water needs for various uses and also to assess the potential resources so as to prioritise the water resource development ;

- (zf) ensuring close linkage between water-use and land-use policies and obviating disparities in availability of water between head-reach and tail end farms and between large and small farms by adopting distribution system and supply of water to families on a volumetric basis subject to certain ceilings and rational pricing ;
- (zg) adoption of command area development approach to ensure that irrigation potential created is fully utilized and the gap between potential created and potential utilized is removed ;
- (zh) fixation and revision of water rates to cover at least the operation and maintenance charges linked to the quality of service provided ;
- (zi) usage charges of water made available for drinking purposes (domestic, commercial, institutional) or for irrigation to farmers on volumetric basis with a view to discourage excessive and wasteful use of water ;
- (zj) involvement of users, farmers and voluntary organizations in various aspects of planning, design, development and management of water resource schemes (both for drinking water and irrigation) ;
- (zk) involvement of user associations, local bodies and other voluntary agencies in operation, maintenance and management of schemes or parts of schemes with a view to eventually transfer these to the user groups and local bodies ;
- (zl) empowerment of such user groups and local bodies to collect water charges and delegation of specific functions, necessary for effective management of the schemes ;
- (zm) division of the State into water zones to ensure proper planning and development of water resources ;
- (zn) optimum efficiency and utilization of hydro-potential for constructing hydro-electric projects with a view to ensuring generation of maximum power, revenue and local employment ;
- (zo) promotion of water conservation consciousness through education, awareness building, regulation, incentives and disincentives ;
- (zp) private sector participation in planning and development of water resources projects particularly power projects, which may help in

- generating financial resources and improving efficiency ;
- (zq) framing of uniform guidelines for resettlement and rehabilitation of project-affected persons and setting up of a grievance redressal mechanism with active participation of affected persons ;
- (zr) periodical assessment of the ground water potential on scientific basis to estimate the availability of water and the economic viability of extraction ;
- (zs) regulating the exploitation of ground water resources to ensure that it does not exceed recharging limits ;
- (zt) preparation of a master plan for flood prone areas with a view to control floods and provide protection ;
- (zu) establishment of an extensive network for flood forecasting for giving timely warning to the people likely to be affected ;
- (zv) promotion of watershed management through extensive soil conservation, catchment area treatment, preservation of forests, increasing the forest area and the construction of check dams to increase infiltration rate and to reduce the intensity of floods ;
- (zw) imposition of complete ban on encroachment on water bodies, wetlands, water courses, and reclamation of such water bodies, wetlands and water courses ;
- (zx) promotion of suitable cost effective measures to minimize the erosion of land by streams ;
- (zy) encouragement of measures like soil moisture conservation, water harvesting, works aimed at increasing the ground water potential by recharging and transfer of surface water from the surplus areas for reducing the problems and severeness related to drought ;
- (zz) development of grazing fields and encouragement of afforestation to improve drought management ;
- (zza) setting up of a proper organisational arrangement at the State level consisting of specialists in investigation, design, construction, hydrology, geology etc. for ensuring safety of storage dams and other water related structures ;

- (zzb) monitoring of water resource projects to identify bottlenecks and to adopt timely remedial measures ;
- (zzc) evolution of a system for evaluating the socio economic and environmental impact of projects ;
- (zzd) periodical audit of the working systems to check the sustainable losses taking place between storage, distribution and usage points;
- (zze) encouragement of research particularly in the fields of hydro-meteorology, assessment of water resources, snow and lake hydrology, ground water hydrology and recharge, water-harvesting, evaporation and seepage losses, economic designs for water resources projects, crops and cropping systems, sedimentation of reservoirs, safety and longevity of water-related structures, river morphology and hydraulics, soils and material research, better water management practices and improvements in operational technology, recycling and re-use, seismology and seismic design of structures and the use of remote sensing technology in development and management.

CHAPTER III

Drinking Water Supply

5. *Supply of drinking water.* —(1) The Government may provide any area in the State with drinking water supply of wholesome water for public, domestic and commercial purposes.

(2) For purposes of such supply, the Government shall cause to be constructed and maintained such water works as may be necessary and may erect stand pipes, wells or pumps for the use of inhabitants of any such area.

6. *Supply of water for domestic purposes.*— The Executive Engineer concerned may, on application made by the owner or occupier of any premises under section 8, arrange for supply of water from the main distribution pipe to such owner or occupier for domestic purposes in such quantity as it may deem reasonable and may at any time, limit the amount of water to be so supplied whenever it considers necessary.

Explanation:—Supply of water for domestic purposes shall not be deemed to include a supply for—

- (a) animals kept for commercial purposes, or for washing of vehicles where such vehicles are kept for sale or hire or where such vehicles are repaired, serviced or overhauled such as workshops, etc. ;
- (b) any trade, manufacture, business or industry ;
- (c) fountain, swimming baths or for any ornamental or mechanical purpose ;
- (d) watering of lawn or garden ; and
- (e) building purposes or for construction activity :

Provided that the Government may, by notification and on the recommendations of the Authority, relax this restriction in respect of any area as may be specified in the notification.

7. Supply of water for purposes other than domestic purposes. —

(1) The prescribed authority may, subject to such conditions as may be prescribed, supply water for any purpose other than domestic purpose, on receiving an application under section 8 specifying the purpose for which such supply is required and the quantity likely to be consumed in connection therewith and on execution of a deed by the applicant in the prescribed manner :

Provided that the prescribed authority may withdraw such supply at any time, if it considers necessary to do so, in order to maintain a sufficient supply of water for domestic purposes.

(2) No person shall, without a permit issued by the prescribed authority, use water supplied under the Act for any purpose other than that for which its use has been authorised or permitted.

8. Application for supply of water. —(1) The owner or occupier of any premises may apply to the Executive Engineer concerned in case of supply of water for domestic purposes, or to the prescribed authority for supply of water for purposes other than domestic use, by submitting an application in the prescribed form and accompanied by the prescribed fee.

(2) On receipt of the application, the Executive Engineer or the prescribed authority, as the case may be, shall satisfy itself that the use of water applied for is not—

- (a) inconsistent with State Water Policy and Plan ;

- (b) likely to create a water shortage in the area ;
- (c) likely to create a health nuisance ;
- (d) likely to adversely affect other lawful users of the water resource ;
- (e) likely to damage the water resource or its environment ;
- (g) incompatible with other uses in the adjoining area ; and
- (h) inconsistent with the provisions of the Act or rules and regulations framed thereunder.

(3) Subject to the provisions of sub-section (2), the Executive Engineer or the prescribed authority, as the case may be, shall, within 30 days after receipt of the application under sub-section (1), either grant the water supply connection to the applicant or, for reasons to be recorded in writing, reject the request for such connection.

9. *Expenses of connection.*— If the request of the applicant for grant of water supply connection is accepted by the Executive Engineer or the prescribed authority, as the case may be, under sub-section (3) of section 8, the applicant shall, at his own cost, provide all communication pipes and fittings and cause to be carried out works relating to the laying and applying such communication pipes and fittings in the premises for which the water supply is sanctioned.

10. *Validity of permission.*— If the person to whom such permission is granted fails to get his premises fitted with pipes and necessary connection within a period of six months from the date of grant of permission, such permission shall be deemed to be inoperative.

11. *Stopping supply of water.*— If at any time supply of water is proposed to be stopped for more than twenty-four hours in any local area or to any premises, the Executive Engineer shall, by giving twenty-four hours notice, inform the local authorities and the inhabitants of such local area or the owner or occupier of such premises, as the case may be, about the proposed stoppage of water supply :

Provided that if the disruption in the supply of water is caused due to a natural calamity, no such prior notice shall be required to be given.

12. *Power to lay or carry pipes.* —(1) The Government may lay or carry any pipe for the purposes of arranging or maintaining the supply of water

through, across, under or over any road, street or a place laid out as, or intended for, a road or street or any field, orchard, park, garden or other private or public premises under the control of a local authority, government department, board or a private owner or occupier and may at all times do every such act which may be necessary or expedient for repairing or maintaining such pipes in an effective state :

Provided that such execution of work shall be carried with least annoyance to the public and within a reasonable time.

(2) For any damage suffered by an owner or occupier or a local authority as a result of carrying out of operations under sub-section (1), compensation shall be paid to such owner, occupier or the local authority, as the case may be, as per the procedure laid down in Chapter V of the Act

(3) The Executive Engineer shall cause not less than fifteen days' notice in writing to be given to the owner or occupier or to the local authority, as the case may be, before commencing any operations under sub-section (1) :

Provided that where immediate action is considered necessary, the Executive Engineer may by order dispense with the necessity of a notice.

(4) The Executive Engineer shall cause the pipe lines to be laid sufficiently underground to safeguard the use of land by the owner or occupier.

13. *Charges for supply of water.*— Every consumer or user shall pay water usage charges at such rate as may be fixed by the Authority under section 128 of the Act on metered basis and in case metering has not been undertaken in any area, on the basis of number of points installed or the dimension of water pipe connected till such time meters are installed, payable by the consumers for supply of water under the Act :

Provided that no costs shall be charged for water used for extinguishing fire.

14. *Separation of premises for water supply.*— In case a service line supplies water to two or more premises or consumers from the main line or distribution pipe, the Executive Engineer may, by written notice, require the owners of such premises or such consumers to lay down separate service pipes for such premises or such consumers and the expenses of doing so shall be borne by all such owners or consumers in such proportion as may be determined by the prescribed authority.

15. *Connection with main line.*— No person shall, without the authorisation or permission of the Executive Engineer or the prescribed authority, as the case may be, make or cause to be made, at any time, any connection with a main line in contravention of the provisions of the Act.

16. *Indemnity.*— Notwithstanding anything contained in any law for the time being in force, the Government shall not be liable to any damage or penalty for discontinuing the supply of water or failure to supply water to any person or any premises or to any local area if the cause of such failure is beyond the control of the Government.

17. *Prohibition on construction over water works.*— No building, wall, fence or any other structure shall be erected, re-erected or constructed on or over any water works without the written permission of the prescribed authority.

18. *Prohibition of certain acts affecting the water works.*— No person shall :—

- (a) remove, alter, injure, damage or in any way interfere with the demarcated water works ;
- (b) carry on within the area aforesaid any operation of manufacture, trade or agriculture or do any act whereby injury may arise to any such water works or whereby the supply of any such water works may be fouled, polluted or rendered less wholesome ;
- (c) cause or suffer to percolate or drain into or upon any water works anything whereby the water therein may in any way be fouled, polluted or its quality or flow altered ;
- (d) cause or allow to enter any animal into such water works ;
- (e) throw or put anything into or upon the water in such works ;
- (f) bathe or wash clothes in such water works ; or
- (g) do any other act which the Government may, by notification, specify.

19. *Prohibitions of certain other acts.*— No person shall unlawfully obstruct the flow of, or flush, or draw off, or divert, or take water from any main or distribution pipe or any service line, tap work or fitting connected with the supply of water to the premises by using, fitting, installing or connecting therewith any machine or by using any other means.

20. *Obligation of owner to prevent misuse of water.*— The owner or occupier of a premise in which water supplied under the Act is misused within his knowledge shall be bound to prevent such misuse or inform the prescribed authority about such misuse.

21. *Power to enter premises.* —(1) The Assistant Executive Engineer or any Gazetted officer, authorised in this behalf by the Executive Engineer concerned, may between 9.A.M to 5.P.M enter into any premises for the purpose of inspecting any water installation in any building, site or premises.

(2) If such officer is, at any such time, refused admittance into such building, site or premises for the purpose aforesaid or is prevented from making such inspection, the Executive Engineer may, after giving the owner or occupier of such building, site or premises an opportunity of being heard, cut off the supply of water to such building, site or premises :

Provided that if any such place is an apartment in the actual occupancy of a woman who, according to custom, does not appear in public, such officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the apartment.

(3) The power conferred by this section includes the power to break open the door where the Executive Engineer or such Gazetted Officer has reason to believe that the water is being misused or used without proper permission :

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so.

(4) The provisions of the Code of Criminal Procedure, Samvat 1989 shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under the said Code.

22. *Cutting of water supply.* —(1) Notwithstanding anything contained in the Act, the Executive Engineer may cut off the supply of water to any premises or may turn off such supply on any one of the following grounds, namely :—

- (a) if, after the receipt of a written notice from the Assistant Executive Engineer concerned requiring him to refrain from so doing, the

owner or occupier of the premises continues to use the water or to permit the same to be used in contravention of the Act or the rules and regulations framed thereunder ;

- (b) if any pipe, tap, work or fitting connected with the supply of water to the premises is found, on inspection in this behalf, to be damaged or out of repair to such an extent so as to cause waste or contamination of water and immediate prevention is necessary ;
- (c) if there is any water-pipe situated within the premises to which no tap or other efficient means of turning off the water is attached ;
- (d) if, by reason of a leakage in the pipe or fitting, damage is caused to the public street and immediate prevention is necessary ; or
- (e) if the owner of the premises refuses or fails to pay, for a period of one month after he has been served with a notice of demand, water charges on account of water consumed in the premises.

(2) When the water has been cut off or turned off under clause (e) of sub-section (1), the Assistant Executive Engineer concerned may, on such terms and conditions as may be prescribed, recommend restoration of the water supply on payment of water usage charges.

23. *Appeals.* —(1) Subject to the provision of sub-section (2), an appeal shall lie from every order of the Executive Engineer or the prescribed authority made under sub-section (3) of section 8, or from every order of the Executive Engineer made under sections 21 and 22,—

- (i) to the Authority, if such order is made by the prescribed authority ; and
- (ii) to the Superintending Engineer concerned, if such order is made by the Executive Engineer.

(2) Every such appeal shall be preferred within ninety days from the date of order :

Provided that the Authority or the Superintending Engineer, as the case may be, may entertain an appeal after the expiry of the said period of ninety days if it or he is satisfied that the appellant was prevented by sufficient cause from filing it in time.

(3) On receipt of any such appeal, the Authority or the Superintending Engineer, as the case may be, shall, after giving the appellant a reasonable opportunity of being heard and after making such enquiry as it or he deems proper, dispose of the appeal within a period of four months from the date of its institution.

(4) The decision of the Authority or the Superintending Engineer, as the case may be, on such appeal shall be final.

CHAPTER IV

Irrigation and Flood Control

PART-I

Construction and maintenance of Irrigation works

24. *Usage of water for irrigation.* —(1) Whenever it appears expedient to the Government that water received from any water source including any natural collection of still or ground water whether by percolation, regeneration, release, or otherwise should be applied or used for the purpose of any existing or projected irrigation work or for the regulation, supply or storage of water, the Government may, by notification, declare that the said water shall be so applied or used after a day to be specified in the said notification, not being earlier than three months from the date thereof.

(2) After issuance of a notification under sub-section (1), the Assistant Executive Engineer shall cause a public notice to be given at convenient places, indicating the intention of the Government to apply or use water for the purposes indicated in the notification.

(3) The application or use of the said water or the application or use of water of any irrigation source under the management or control of the Government shall be regulated according to the provisions of the Act.

(4) Where the Government is of the opinion that in the interests of proper irrigation from any irrigation work constructed or proposed to be constructed it is necessary to control the construction of wells for any purpose other than exclusive domestic use, either on personal or community basis, in any area, the Government may, by notification, specify such area and on issue of such notification, no person shall within such area construct or cause to be constructed any such well except with the previous sanction of the Government or any officer authorised by the Government in this behalf and subject to such conditions as the Government or such officer may impose.

(5) Where the Government is of the opinion that in the interest of proper irrigation, any land under existing or proposed irrigation work is to be transferred to another work or proposed work or completely excluded from any existing work, the Government may, by notification, specify such land and such works to take effect from a date specified in the notification not being earlier than one month from the date thereof.

25. *Powers of entry on land etc.*— At any time after the day specified in the notification under sub-section (1) of section 24, an Assistant Executive Engineer may enter on premises or any land or remove any obstruction or close any channel or do any other thing necessary for such application or use of the said water and for the said purpose, he may seek the help of police or any other authority as he thinks fit.

26. *Power to enter and survey etc.*— Whenever it shall be necessary to make an inspection, enquiry or examination in connection with a projected irrigation work or its construction or with the maintenance of an existing irrigation work or with the application or use of the water of any irrigation work for the purpose of regulation, supply or storage of water, the Assistant Executive Engineer concerned may—

- (a) enter upon such land, premises or structure or anything attached to the said land, premises or structure as he may think necessary for the purpose ;
- (b) undertake inspection, surveys or take levels thereon ;
- (c) dig and bore into the sub-soil ;
- (d) cause any standing crop, fence or jungle to be cleared or removed for conducting such inspection, survey or investigation ;
- (e) exercise all powers and do all things necessary for such inspection, survey or investigation in respect of such land as he might exercise and do if the Government had issued a notification under section 4 of the State Land Acquisition Act, Samvat 1990 to the effect that land in that locality is likely to be needed for public purpose ; and
- (f) set up and maintain gauge discharge and silt measurement stations and do all other things necessary for purposes of such inspection, inquiry and examination.

27. *Power to enter upon land, building etc, for inspection.*— The Assistant Executive Engineer concerned, may for the purpose of inspecting or

regulating use of the water supplied, or for measuring the land irrigated thereby, enter upon any land, water course or field channel on account of which any water rate is chargeable and for doing all things necessary for the proper regulation and management of the irrigation work from which such water is supplied.

28. Power to enter for repairs and to prevent accidents. —(1) In case of occurrence, or apprehension, of an accident to an irrigation work or flood control work, the Assistant Executive Engineer concerned or any other person authorised by him in this behalf, may enter upon or into any immovable property in the neighbourhood of such irrigation or flood control work as may be necessary for repairing any damage done or for preventing such accident and remove, carry or utilise trees and other material and take such other steps, and execute any work as may be necessary for such purpose.

(2) If any person suffers any loss or damage as a result of removal or clearance of standing crops or felling and carrying of trees, he shall be paid compensation for such loss or damage in accordance with the provisions of Chapter V of the Act.

29. Notice to an occupier of building. —(1) Where the Assistant Executive Engineer intends to enter any building, premises or any land appurtenant thereto under the provisions of sections 25 to 28, he shall give to the occupier of such building or premises a reasonable prior notice as the urgency of the case may allow.

(2) The power conferred by sections 25 to 28 includes the power to break open the door of any premises for purposes of removing any obstruction or for undertaking inspection, survey, digging, clearing any crop, fence or jungle or doing repairs or preventing accidents or doing any other thing necessary for construction, maintenance or regulating the supply of an irrigation work :

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so:

Provided further that if any such place is an apartment in the actual occupancy of a woman who, according to custom, does not appear in public, such officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the apartment.

(3) The provisions of the Code of Criminal Procedure, Samvat 1989 shall, so far as may be, apply to any search or seizure under this section as

they apply to any search or seizure made under the authority of a warrant issued under the said Code.

30. *Canal crossings.* —(1) The Government shall provide and maintain suitable means of canal crossings at such places as the Government thinks necessary for the reasonable convenience of the inhabitants of the adjacent land.

(2) No suit or any proceeding shall lie against the Government for enforcing the construction of a canal crossing, or for enforcing the alternation of a crossing or for compensation for damage arising from the absence or inadequacy of any crossing, or for modifying or setting aside any scheme framed or order passed under this section.

Explanation:—Suitable means of canal crossing include means the passage of traffic and of water.

31. *Acquisition of land for irrigation works.*— If the Government is satisfied that any land is required for the construction of an irrigation work excluding water courses, field channels and field drains, or for the maintenance, improvement or extension of an existing irrigation work, the Government may acquire the land in accordance with the provisions of the State Land Acquisition Act, Samvat 1990.

PART – II

Water Channels and Field Channels

32. *Preparation of draft scheme.* —(1) The Executive Engineer concerned may, on his own motion or on an application made by owners or occupiers of any land or field, prepare or cause to be prepared a draft scheme to provide for all or any of the matters, namely :—

- (a) construction, alteration, extension and re-alignment of any water channel, or any existing water channel constructed or maintained by any owner or occupier ;
- (b) re-allotment of areas served by one water course to another ;
- (c) lining of any water channel ;
- (d) occupation of land for the deposit of soil gathered from clearance of any water channel ;

- (e) any other matter which is necessary for proper maintenance and distribution of supply of water from a water course.

(2) Every scheme prepared under sub-section (1) shall amongst other matters, set out the estimated cost thereof, the re-alignment of any water channel or existing water channel, as the case may be, the site of the outlet, the particulars of the owners or occupiers or the persons to be benefited or the persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.

33. *Publication of the Scheme.* —(1) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be specified for inviting objections and suggestions with respect thereof within thirty days from the date of its publication.

(2) After considering of such objections and suggestions if any, the Executive Engineer shall approve the scheme either as it was originally published or in such modified form as he may consider fit and publish the same.

(3) The Superintendent Engineer may, on his own motion at any time or on an application made, within a period of thirty days from the date of publication of a scheme, by any person aggrieved by such scheme, revise the scheme approved under sub-section (2) :

Provided that such revision shall not be made without affording the person affected an opportunity of being heard.

(4) Any person aggrieved by an order of Executive Engineer under sub-section (2), or Superintendent Engineer under sub-section (3), may prefer an appeal, within period of thirty days of passing of such order, to the prescribed authority whose decision thereon shall be final.

34. *Acquisition of land for water channels and field channels.*— After a scheme has been approved by the Executive Engineer under sub-section (2), or revised by the Superintending Engineer under sub-section (3), or where an appeal has been preferred before the prescribed authority under sub-section (4), after it has been disposed of, the Executive Engineer shall, acquire the land by agreement with the owner thereof, or initiate the process of acquiring the land by the Government in accordance with the provisions of the State Land Acquisition Act, Samvat 1990.

35. *Implementation of Scheme.* —(1) The Executive Engineer shall, after taking possession of the land acquired under section 34, take steps for implementation of the scheme.

(2) Any scheme constructed under sub-section (1) shall be the property of the Government.

(3) Unless ordered by the Government to the contrary, any extension, alteration or re-alignment of water channels at the instance of any owner or occupier shall be done at the cost of such owner or occupier.

36. *Maintenance of water channels.*— On execution of the scheme, the Executive Engineer shall, by order in writing, direct the owners, occupiers or beneficiaries to take over and maintain the water channel and on failure of any owner or occupier or beneficiary to comply with this direction, he shall make arrangements for maintenance of the water channel at the cost of such owners or occupiers or beneficiaries in proportion to the culturable commanded area under the scheme held by them.

37. *Persons using water course to construct works.* —(1) The Assistant Executive Engineer may issue an order to the persons using any field channel to construct suitable bridges, culverts or other works as approved by the Assistant Executive Engineer for the passage of the water of such field channel across any public road, canal or drainage channel in use before the said field channel was made or to repair any such works.

(2) The order issued under sub-section (1) shall specify a reasonable period within which such construction or repairs shall be completed.

(3) If, after the receipt of such order, the person to whom it is addressed does not, within the said period, construct or repair such work to the satisfaction of the Assistant Executive Engineer, he may with the approval of Executive Engineer, himself construct or repair the same, and demand the cost of such construction or repairs from the defaulting person responsible for such construction or repair.

38. *Protection of water channels against demolition etc.* —(1) if a person demolishes, alters, enlarges, obstructs or encroaches upon a water channel or field channel or causes any damage thereto, any person affected thereby may apply to the Assistant Executive Engineer for directing the restoration of the water channel or field channel to its original condition.

(2) The Assistant Executive Engineer may, on his own motion or on the information given by village Patwari, Lambardar or any other person or on receiving an application under sub-section (1), after making such enquiry as he may deem fit, require, by a notice in writing served on the persons found to be responsible for so demolishing, altering, enlarging, obstructing, encroaching

or causing damage, to restore at his own cost the water course or field channel to its original condition within such period as may be specified in the notice.

(3) If such person fails to restore, to the satisfaction of the Assistant Executive Engineer, the water channel or field channel to its original condition within the period specified in the notice served on him under sub-section (2), the Assistant Executive Engineer may cause the water channel or field channel to be restored to its original condition and recover the cost incurred on such restoration from the defaulting person.

(4) Any person aggrieved by the order of the Assistant Executive Engineer may prefer an appeal, within thirty days of the passing of such order, to the Executive Engineer, whose decision on such appeal shall be final.

39. Adjustment of claims between persons jointly using water channel.—

(1) If any person, jointly responsible with others for the maintenance of a water channel or field channel, or jointly making use of a water channel with others, neglects or refuses to pay his share of the maintenance or to execute his share of any work necessary for such maintenance, the Assistant Executive Engineer shall, on receiving an application in writing from any person affected by such neglect or refusal, investigate the case and make such order thereon as he deems fit.

(2) The order passed under sub-section (1) shall be appealable to the Executive Engineer, whose decision thereon shall be final.

40. Supply of water through intervening water channel. —(1) Whenever application is made to a Assistant Executive Engineer for supply of water from an irrigation work, and it appears to him expedient that such supply should be given and that it should be conveyed through a field channel, he shall give notice to the persons responsible for the maintenance of such field channel to show cause on a day not less than seven days from the date of such notice as to why the said supply should not be so conveyed, and after making enquiry on such day, the Assistant Executive Engineer shall determine whether and on what conditions the said supply shall be conveyed through such field channel :

Provided that such application is made for lands already included in the irrigation works.

(2) Any person, aggrieved by the determination of the Assistant Executive Engineer, may prefer an appeal to the Executive Engineer within a period of thirty days of such determination.

(3) When the Assistant Executive Engineer determines that supply of water of an irrigation work shall be conveyed through a field channel, his decision shall, when confirmed or modified by the Executive Engineer on appeal, be binding on the applicant and also on the persons responsible for the maintenance of the said field channel.

(4) Such applicant shall not be entitled to use such field channel until he has paid the expenses of alteration of such field channel and also such share of the first cost of such field channel as the Assistant Executive Engineer or the Executive Engineer, as the case may be, may determine.

(5) Such applicant shall also be liable for his share of the cost of maintenance of such field channel so long as he uses it.

41. *Application for transfer of existing field channel.* —(1) Any person desiring that a field channel should be transferred from its existing owner to him may apply in writing to the Assistant Executive Engineer, if he—

- (a) has failed to procure such transfer from the owner of such field channel ;
- (b) undertakes to bear the cost and to do all things necessary for procuring such transfer ; and
- (c) has sufficient means to defray the cost of such transfer.

(2) If the Assistant Executive Engineer is satisfied that the said transfer is necessary for the better management of the irrigation from such field channel and that the statements in the application are true, he shall call upon the applicant to make such deposit as he considers necessary to defray the cost of the preliminary works and the amount of any compensation that may become due under the provisions of section 46 in respect of such transfer, and upon such deposit being made, he shall affix a notice of the application at a conspicuous place in the every village, and shall send a copy of the notice to the Tehsildar of every Tehsil, through which such field channel passes.

42. *Objections to transfer applied for.* —(1) Within fourteen days of the affixation of notice under section 41, any person interested in the field channel to which the notice refers and having any objection to the transfer of such field channel, may apply to the Assistant Executive Engineer by petition stating his objections to such transfer.

(2) The Assistant Executive Engineer may either reject the petition or may proceed to enquire into the validity of the objections giving previous notice to persons concerned stating the place and time at which such enquiry shall be held :

Provided that such notice shall also be given to the Tehsildar of the area through which field channel passes.

(3) The Assistant Executive Engineer shall record in writing all orders passed by him under this section and the grounds thereof.

43. *Transfer of field channel to the applicant.* —(1) If no such objection is made, or where any objection is made and the Assistant Executive Engineer rejects such objections, the Assistant Executive Engineer shall intimate the Tehsildar to that effect, and shall, with the agreement of the Tehsildar, transfer the field channel from the existing owner to the applicant.

44. *Procedure when objection is held valid.* —(1) If the Assistant Executive Engineer considers any objection made as aforesaid to be valid, he shall inform the Tehsildar accordingly.

45. *Procedure when Tehsildar disagrees with Assistant Executive Engineer.* —(1) If the Tehsildar disagrees with the Assistant Executive Engineer, the matter shall be referred for decision to the Executive Engineer and the decision of the Executive Engineer thereon shall be final.

(2) The Assistant Executive Engineer, if he is so directed by the Executive Engineer under sub-section (1), shall, subject to the provisions of section 46, transfer the field channel from the existing owner to the applicant.

46. *Expenses to be paid by the applicant before transfer of field channel.* —(1) No transfer of field channel shall be made until the applicant has paid to the person named by the Assistant Executive Engineer such amount as the Executive Engineer determines under sub-section (2) to be paid as compensation for transfer of field channel together with all expenses incidental to such transfer.

(2) The Assistant Executive Engineer shall recommend the amount to be paid as compensation by the applicant for transfer of field channel to him together with expenses incidental to such transfer to Executive Engineer who, in determining the compensation, shall follow the provisions of the State Land Acquisition Act, Samvat 1990.

(3) Any person aggrieved by the order of Executive Engineer under sub-section (2) may prefer an appeal to the Superintending Engineer within a period of thirty days from the date of order. The order of the Superintending Engineer on such appeal shall be final.

47. *Conditions binding on applicant.* —(1) On transfer of a field channel to the applicant, the applicant or his representative in interest shall be bound to construct and maintain, to the satisfaction of the Assistant Executive Engineer and for the convenience of the neighbouring land, all the works necessary for—

- (a) the passage across such field channel existing prior to its transfer ;
- (b) the drainage intercepted by it ; and
- (c) for providing proper communications across it.

(2) If any field channel transferred hereinabove is not used for three years continuously, the right of the applicant or of his representative in interest to occupy such field channel shall cease absolutely and same shall vest in the State.

48. *Construction and maintenance of filed channels.* —(1) Whenever it appears expedient to the Assistant Executive Engineer either on his own motion or on the application of an owner or occupier or beneficiary that for better utilization of irrigation potential created by an irrigation work, field channels should be constructed in any area, he may cause to be served on the owner or occupier or beneficiary concerned a notice in the prescribed form containing the exact location of sluices or outlets on the irrigation works and specifying the area of irrigable land to be served by the same and direct them to construct such field channels at their own cost within a specified time which shall not be more than three months from the date of issue of the notice.

(2) If the owner or occupier or beneficiary fails to construct the field channels in his land as directed by the Assistant Executive Engineer under sub-section (1) within the time specified therein, the Assistant Executive Engineer may, after giving the owner or occupier a reasonable opportunity of being heard, construct the field channels at the cost of the Government and recover the cost plus 15% of the actual cost pro rata from such owner or occupier or beneficiary, as the case may be.

49. *Maintenance of field channels.* —(1) It shall be the duty of every owner, occupier and beneficiary to maintain the field channels in a proper state of repairs at their own cost.

(2) If the Assistant Executive Engineer is of the opinion that any field channel is not being properly maintained, he shall, after providing an opportunity to the owner or occupier or beneficiary concerned to take such action as may be directed by him, proceed to have such repairs made as he may consider necessary at the cost of the owner or occupier or beneficiary plus 15% of the actual cost.

50. *Acquisition of land for construction of field channels.* —(1) When there is any dispute between the owners or occupiers or beneficiaries for the construction of a field channel, the Assistant Executive Engineer shall, recommend to the Executive Engineer concerned for acquisition of land in accordance with the provisions of section 34 :

Provided that the compensation payable for acquisition of land under this section shall be paid by the owners or occupiers or beneficiaries of such field channel.

51. *Preparation of draft scheme in culturable commanded area.* —(1) The Executive Engineer concerned may, on his own motion or on the application of not less than fifty percent of the owners or occupiers of land in the culturable commanded area, prepare a draft scheme to provide for on-farm development on a group or block of fields.

(2) Every scheme prepared under sub-section (1) shall, among other matters, set out the cost of the on-farm development works, a sketch plan of the area proposed to be covered by the said scheme and the particulars of the owners or occupiers to be benefited by the such scheme.

(3) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be specified inviting objections and suggestions with respect thereof within thirty days of the publication.

(4) After consideration of such objections, and suggestions, if any, the Executive Engineer shall approve the scheme either as it was originally published or in such modified form as he may consider fit and publish the same.

(5) The Superintending Engineer may at any time, or on an application made by any person aggrieved by the scheme approved under sub-section (4) within a period of thirty days from the date of publication of the scheme, revise or annul the scheme so approved :

Provided that such revision or annulment shall not be made without affording the person affected an opportunity of being heard.

(6) If the draft scheme is not approved by the Executive Engineer after its publication under sub-section (3) or if such scheme is annulled by the Superintending Engineer under sub-section (5), any owner or occupier or beneficiary aggrieved by such order of the Executive Engineer or the Superintending Engineer, as the case may be, may prefer an appeal, within thirty days of the passing of the order aggrieved against, to the prescribed authority whose decision thereon shall be final.

(7) After a scheme has been approved by the Executive Engineer under sub-section (4), or where an appeal has been preferred under sub-section (6) after it has been disposed of, the scheme shall be published in such manner as may be specified and upon such publication, it shall be executed or got executed by the owners or occupiers or beneficiaries in the group or block of fields at their cost, within such period of time as may be specified by the Executive Engineer.

(8) In the event of failure of any or all of the said owners or occupiers or beneficiaries to execute the works within the said period of time specified by the Executive Engineer, or in the event of any or all of the owners or occupiers or beneficiaries informing in writing the said Executive Engineer prior to the expiry of the said period of time, that they are unable to execute or get executed the works as required, the works may be carried out by the Executive Engineer and the cost of the works so executed shall be recoverable by the Executive Engineer from the owners or occupiers or beneficiaries who fail, or indicate their inability, to execute or get executed the works as required.

(9) The share of the individual owners or occupiers or beneficiaries of the cost of works executed in the said group or block of fields by the Executive Engineer shall be such as determined by the Executive Engineer.

PART – III

Drainage and Prevention of water logging

52. *Power to prohibit obstructions.*— Whenever it appears to the Government that injury or damage to any land has arisen or may arise from the encroachment upon any irrigation or flood control work, the Government may, by notification, prohibit, within limits to be defined in such notification, or may order the removal of, such encroachment.

53. *Power to remove obstructions after prohibition.* —(1) The Executive Engineer may, after the notification under section 52, issue an order to the person causing or having control over any such encroachment to remove such encroachment within a time to be specified in the order.

(2) If within the time so specified, such person does not comply with the order, the Executive Engineer may remove the encroachment with the assistance of police force and recover the expenses involved in such removal from the person concerned :

Provided that the Executive Engineer may, in cases of emergency, remove the encroachment before the publication of notification and the expenses incurred on such removal shall be recovered from the person concerned.

54. *Preparation of schemes for drainage works.* —(1) Whenever it appears to the Government that any drainage work, excluding field drain, is necessary in the interest of public health or for improvement of any land, or for the proper cultivation or irrigation thereof, or for protection from floods and other accumulation of water or injurious salts or for prevention of erosion by a water source, the Government may, by notification, declare that the drainage work shall be constructed after a day to be specified in the said notification not being earlier than three months from the date thereof.

(2) As soon as practicable after the issuance of notification under sub-section (1), the Executive Engineer or any officer duly empowered by him in this behalf shall cause public notice to be given at convenient places, indicating the intention of the Government to construct the drainage work excluding field drain referred to in sub-section (1)

(3) The Government shall acquire land, if required, for construction of drainage works in accordance with the provisions of State Land Acquisition Act, Samvat 1990.

55. *Scheme for field drains.* —(1) Notwithstanding anything contained to the contrary in sub-section (1) of section 54, the Executive Engineer may cause a scheme for field drains to be drawn up.

(2) Every scheme drawn up under sub-section (1), amongst other matters, shall set out the estimated cost thereof, the alignment of the proposed field drain or realignment of the existing field drain, as the case may be, the particulars of the owners or occupiers to be benefited, the particulars of persons who may be affected thereby and sketch plan of the area proposed to be covered by the scheme.

(3) The provisions contained in sections 33, 34 and 36 to 38 shall apply *mutatis mutandis* to the scheme drawn up for field drains.

(4) The Executive Engineer may construct the field drains on behalf of the owners or occupiers and recover the cost *pro rata* from such owners or occupiers.

PART – IV

Regulation of irrigation supplies

56. *Supply of water from Irrigation work.*—Notwithstanding anything contrary contained in the Act, the water from an irrigation work may be supplied:—

- (a) as provided in section 57 ; and
- (b) on an application for irrigation or non-irrigation purposes as provided in section 58.

57. *Regulation of water supply from irrigation works.*—(1) An Assistant Executive Engineer may, after such inquiry as he deems fit, regulate in respect of any irrigation work for each year or part thereof or for a specified term of years at a time, as circumstances may require, the—

- (a) time for letting out water for irrigation ;
- (b) period of supply ;
- (c) quantity of supply ; and
- (d) areas to be supplied at different times.

Explanation:—A land shall be deemed to have been supplied with water notwithstanding that the water is not utilised for irrigation provided that such non utilisation is solely due to the action or inaction on the part of the owners or occupiers interested in such land.

58. *Application for permission to use water from an irrigation work.*—(1) Any person, desiring to have supply of water from an irrigation work for irrigating land not included in any area to which supply of water is regulated under section 57, shall make a written application to that effect to the Assistant

Executive Engineer concerned, subject to any general or special order made by the Authority determining the extent of land for which water can be made available from such irrigation works, and the Assistant Executive Engineer may, if in his opinion such supply can be made without detriment to the supply of water to lands to which supply of water is regulated under section 57, order the supply of water for a period not exceeding six years subject to such conditions as may be specified in such order.

(2) If after six successive years of supply of water made to any land referred to in sub-section (1), the occupier, owner or beneficiary of such land applies for the supply of water being made permanent, such application, with the opinion of the Assistant Executive Engineer, shall be forwarded to the Executive Engineer concerned who shall take steps to include the land in the area to which supply of water is regulated by section 57.

(3) The water usage charges for the use of water for temporary cultivation under sub-section (1) shall be the normal water usage charges.

(4) With the sanction of and subject to such conditions, payments and restrictions, as may be imposed by the Government or such officer as may be authorised by the Government in this behalf, the Executive Engineer may, without detriment to the supply of water to lands to which supply of water is regulated under section 57, grant permission for water to be taken from an irrigation work, for use of domestic purposes, gharats, fish or cattle ponds and industrial purposes.

(5) If any person uses water from irrigation work without obtaining the permission required under this section, he shall, in addition to any penalty that he may incur under the Act for such unauthorised use of water, be liable to pay water usage charges at such rate as may be calculated by the Executive Engineer.

59. *Non-supply of water in certain circumstances.*— The supply of water to any water course or field channel or to any person who is entitled to such supply shall not be stopped except—

- (a) whenever, and so long as, it is necessary to stop supply for the purpose of maintenance of an irrigation work or for execution of any work ordered by the competent authority ;
- (b) whenever, and so long as, any field channel by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water thereof ;

- (c) whenever, and so long as, it is necessary to do so in order to supply water in rotation to the legitimate demands of other persons entitled to water ;
- (d) whenever, and so long, as it may be necessary to do so in order to prevent the wastage or misuse of water ;
- (e) within the periods fixed from time to time by the Assistant Executive Engineer of which due notice shall be given ;
- (f) whenever there is decrease in the supply of water in the irrigation work due to any natural or seasonal cause and so long as it is necessary to do so ; and
- (g) for any reasons beyond the control of the Department.

60. *Sale or subletting of right to use water of irrigation work.* —(1) No person entitled to use the water from any irrigation work shall sell or sublet or otherwise transfer his right of such use or use it for purposes other than irrigation.

(2) Every right to the supply of water for agricultural purposes to any land shall be deemed to have been transferred whenever a transfer of such land takes place.

61. *Supply of water for irrigation of one or more crops.*— When water from an irrigation work is supplied for the irrigation of one or more crops only, the right to use such water shall be deemed to continue only until such crop or crops shall come into maturity.

62. *Power to prescribe the kind of crop to be grown under the irrigation area.* —(1) Where the Executive Engineer is satisfied that for the better cultivation of lands, or for better production of crops, or for preservation and proper utilisation of water resources or any irrigation work it is expedient to identify the kind of crops that should be sown, planted or grown on lands under the irrigable command of an irrigation work or any part thereof, and the period during which such crops should be sown, planted or grown on such lands, he may, with the agreement of the Chief Agriculture Officer concerned having regard to the soil characteristics, climate, rainfall and availability of water, by order in writing, make a declaration to that effect. Such a declaration shall be given wide publicity in such manner as the Executive Engineer may think fit.

(2) On a declaration being made under sub-section (1), the Assistant Executive Engineer concerned may specify, by notice, the kind of crops that shall be sown, planted or grown on the lands under the irrigable command of the irrigation work or part thereof, the area of crops, and the period during which such crops shall be sown, planted or grown.

(3) The Assistant Executive Engineer shall, subject to the provisions of section 59, thereupon by order regulate the supply of water from the irrigation work for sowing, planting or growing such crops during the periods specified in the order.

(4) On the publication of the notice under sub-section (2), no person shall sow, plant or grow or allow to be sown, planted or grown any crop other than the crop specified in such notice on any land under the irrigable command of the irrigation work or part thereof specified in such notice and during the periods specified therein.

(5) Any person aggrieved by a declaration made under sub-section (1) or any notice given under sub-section (2) may, within thirty days from the date of such declaration or notice, as the case may be, file an appeal before the Superintending Engineer, who shall, after hearing the parties, pass such order as he thinks fit.

(6) The person, who has sown, planted or grown any unauthorised crop or allowed any land to be sown, planted or grown with such unauthorised crop shall, in addition to the penalty that he may have incurred under the Act for such contravention, be liable to pay such water usage charges as may be assessed by the Executive Engineer concerned.

63. *Small schemes for supply of water from irrigation work and their management.* —(1) Where in the opinion of the Government it is in public interest to prepare small schemes for irrigating lands not exceeding 100 hectares or such area as may be prescribed, the Government may, direct the concerned Executive Engineer to prepare such small schemes for supply of water from an irrigation work to such lands and thereafter handover the management of the scheme and distribution of water therefrom to the Water Committee appointed under section 64.

(2) Every scheme under sub-section (1) shall contain the following particulars, namely :—

- (a) the area to be covered by the scheme ;

- (b) the survey number of lands included in such area and the name of owners and occupiers thereof ;
- (c) the period or periods during which water shall be supplied to such lands ;
- (d) the crop or crops which shall be permitted to be sown, produced or grown thereon ;
- (e) the water charges for supply of water to such land included in the scheme ;
- (f) the support amount to be paid by the Government for the management of the irrigation work to the Water Committee ; and
- (g) the manner of publication of the scheme, invitation of objections or suggestion thereon.

(3) The scheme prepared under sub-section (1), shall be given wide publicity by the Assistant Executive Engineer in the language understood by the inhabitants of the area through which the irrigation work passes in such manner as he thinks fit for the information of, and for inviting objections and suggestions, if any, from, the inhabitants who are likely to be benefitted or affected by such scheme.

(4) After considering such objections and suggestions, if any, received in respect of the scheme published under sub-section (3) within the specified period, the Government may, after making due inquiries, approve the scheme with or without any modification or may reject it.

(5) The scheme approved under sub-section (4) shall be published by the Government, by notification, and shall come into force on such date as the Government may specify in such notification.

(6) The scheme may at any time be varied by a subsequent scheme made, approved and published in accordance with the provisions of sub-section (2) to sub-section (5).

(7) The scheme may at any time be cancelled by the Government by a notification.

64. *Constitution and functions of Water Committee.* —(1) After a scheme has come into force under sub-section (5) of section 63, the Government shall constitute a Water Committee for execution and maintenance of the scheme

subject to overall superintendence, direction and control of the Assistant Executive Engineer concerned.

(2) The Water Committee shall consist of five persons elected by the owners, occupiers and beneficiaries of land included in the scheme from amongst themselves in the manner as may be prescribed.

(3) The members of the Committee shall ordinarily hold office for a period of three years from the date of their election.

(4) The Committee shall meet from time to time, and shall follow such procedure as it deems fit for the transaction of its business.

(5) The Water Committee shall—

- (a) execute the scheme as approved by the Government and under the directions and guidance of Assistant Executive Engineer ;
- (b) manage the irrigation work and ensure proper distribution of water to the lands included in the scheme ;
- (c) specify the crops to be grown during any period or periods according to the provision of the scheme ;
- (d) carry out day to day maintenance and repairs of the irrigation work ;
- (e) maintain the irrigation system of the irrigation work beyond the outlet in a fit state of supply of water ;
- (f) assist the Assistant Executive Engineer :—
 - (i) in detecting and preventing encroachment on irrigation work and on the lands appurtenant thereto ;
 - (ii) for preventing damage to the irrigation work ; and
 - (iii) for repairing any damage caused to the irrigation system ;
- (g) have the power to impose a penalty for unauthorised use of water, of use of water out of turn or for growing crops contrary to the provisions of the scheme ; and

- (h) maintain accounts of the amount paid to it and expenditure incurred by it in such manner as may be prescribed.

(6) The amount of penalty that may be imposed under clause (f) of sub-section (5) shall consist of a fine not exceeding rupees five thousand.

(7) Any person aggrieved by the decision of the Water Committee may within thirty days from the date of such decision prefer an appeal to the Assistant Executive Engineer.

(8) The Executive Engineer may any time, or on an application made in this behalf by aggrieved party, call for and examine the record of any inquiry or proceeding underlying such order of the Water Committee, or of the Assistant Executive Engineer, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed, and it may pass any order upholding, annulling, modifying or reversing the order of the Water Committee or of the Assistant Executive Engineer, as the case may be :

Provided that no order affecting any person shall be made unless such person is given a reasonable opportunity of being heard.

65. *Suspension and supersession of Water Committee.* —(1) If at any time the Government is of the opinion that the—

- (a) Water Committee has persistently made default in the performance of the function conferred on it by or under the Act ; or
- (b) circumstances exist which render it necessary in the public interest so to do,

it may, by order, suspend the Water Committee for a period not exceeding two years as may be specified in the order :

Provided that before suspending a Water Committee for the reasons mentioned in clause (a), the Government shall give a reasonable opportunity to the Committee to show cause why it should not be suspended and shall consider the explanation and objections, if any, of such Committee.

(2) Upon suspension of a Water Committee under sub-section (1), all the members shall, as from the date of suspension, vacate their offices as such and all the powers, functions and duties which may, by or under the Act be exercised, performed or discharged by the Water Committee shall, until the Water

Committee is reconstituted under sub-section (3), be exercised, performed or discharged by the Assistant Executive Engineer concerned. All property owned or controlled by the Water Committee shall, until the Water Committee is reconstituted under sub-section (3), vest in the Government.

(3) On the expiration of the period of suspension specified in the order issued under sub-section (1), the Government may—

- (a) extend the period of supersession for such further term not exceeding six months, as it may consider necessary; or
- (b) supersede the suspended Committee and reconstitute it by holding fresh elections :

Provided that any person who vacated his office following the suspension for reasons mentioned in clause (a) of sub-section (1) shall not be deemed to be disqualified for re-election :

Provided further that the Government may at any time before the expiration of the period of suspension, whether originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) of this sub-section :

Provided further that till re-constitution of Water Committee under this sub-section, the Assistant Executive Engineer shall get the execution of schemes done by the line departments.

PART – V

Safety of Irrigation Works

66. *Limitation in respect of irrigation works.* —(1) Except as may be prescribed, no person other than an Assistant Executive Engineer shall—

- (a) interfere with any irrigation or hydraulic work ;
- (b) construct any earthen or masonry bund or weir on any channel or stream, flowing upstream or downstream of any irrigation work ; or
- (c) perform or undertake any excavation activity within the vicinity of any irrigation or hydraulic work.

(2) No person shall raise any residential, commercial or industrial building or unit in the vicinity of any irrigation or hydraulic work without prior permission from the prescribed authority.

67. Power to remove encroachments.—(1) Assistant Executive Engineer may, by order, require any person interfering with or encroaching upon any irrigation or hydraulic work to remove such interference or encroachment within the time specified in such order and if such person does not comply with such order, the Assistant Executive Engineer may remove the interference or encroachment at the expense of such defaulter and take such other action as may be necessary including the recovery of expenses incurred on removal of such interference or encroachment.

(2) Assistant Executive Engineer may, if he deems necessary, seek the assistance of police force for removal of such interference or encroachment.

68. Obligation of owners in respect of works effecting safety of canals.—(1) Every person whose water storage tank or reservoir or any other device of storing water is situated in the vicinity of any irrigation work shall maintain such tank, reservoir or device in a safe and efficient condition.

(2) If, in the opinion of the Assistant Executive Engineer, such tank, reservoir or device is not in a safe or fit condition or is likely to endanger any irrigation work in its vicinity, the owner or occupier thereof shall be served with a notice to bring such tank, reservoir or device to a safe and fit condition within such time as may be specified in the notice.

(3) If such owner or occupier fails to maintain such tank, reservoir or device to a safe and fit condition within the time specified or does such repairs which in the opinion of the Assistant Executive Engineer are unsatisfactory, the Assistant Executive Engineer may carry out the necessary repairs at the expenses of such owner or occupier and thereafter recover the expenditure incurred on such repairs from such owner or occupier.

69. Prohibition to conduct operations near irrigation work.— No person shall, without the prior permission of the Assistant Executive Engineer, conduct any operation requiring the use of any explosives within such distance from the boundaries of an irrigation work, as may be specified.

70. Fishing and Plying of boats, etc.— No person shall have the right to fish or ply any vessel or boat in a reservoir, pond, tank or, across and along a river, stream, nallah, canal, water course or channel maintained or controlled by the Government without the permission in writing of the Government or of

such officer as may be empowered in this behalf by the Government, or of such person/officer who is empowered under any law for the time being in force to grant said permission and except under such terms and conditions and subject to payment of such fees as may be prescribed.

71. *Prohibition on letting out water from canal.*— No person other than the Assistant Executive Engineer, or any officer duly empowered in this behalf by him, shall let out water from a river, stream, nallah, canal or channel by cutting the bund, constructing a sluice or outlet or any other similar contrivance.

72. *Prohibition to abstract water from irrigation work.* —(1) No person shall abstract water for any purpose by the installation of a pump set or other electrical or mechanical device for pumping out water from any irrigation work except with the prior permission of the Executive Engineer within whose jurisdiction such pump set or other device for abstraction of water is installed and subject to such terms and conditions and subject to the payment of such fees, as may be prescribed :

Provided that no such permission, shall be issued unless the Executive Engineer is satisfied that the water to be pumped out of such irrigation work is surplus and will not affect the functioning of such irrigation work.

(2) If any person abstracts water from any irrigation work in violation of sub-section (1), Executive Engineer or any officer authorised by him in that behalf shall have the power to enter any property, place or premises in which any pump set or other electrical or mechanical device is installed for the abstraction of the water and seize such pump set or other device and if required, may seek assistance of police force for removal and seizure thereof.

(3) The power conferred by this section includes the power to break open the door of any premises where sinking of well or extraction/use of ground water may be going on :

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so :

Provided further that if any such place is an apartment in the actual occupancy of a woman who, according to custom, does not appear in public, such officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the apartment.

(4) The provisions of the Code of Criminal Procedure, Samvat 1989 shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under the said Code.

73. Prohibition on deposition of any material or waste in or near a water channel.— No person shall deposit any material or waste in or near any channel or field drain or any other work feeding any irrigation work.

74. Prohibition on discharge of sewage or industrial effluent in the irrigation work.— No person shall pollute, or discharge any sewage or industrial effluent, in the water of any irrigation work which may deteriorate the quality of water of, or give rise to the growth of any weeds in, or cause an injury to, any irrigation work.

PART – VI

Flood Basin and Embankments

75. Flood basins.— Where the Authority considers it necessary or expedient so to do, it may recommend to the Government for declaration of any area through which a water source flows and the area comprising of the bed, both sides and nearby low land susceptible to floods by inundation of such water source, as flood basin.

76. Determination of limits of flood basin. —(1) For determination of the limits of a flood basin, the prescribed authority shall cause a survey to be made of a water source and for the said purpose proper charts and registers shall be prepared specifying all the boundaries and landmarks and any other necessary matter for the purposes of ascertaining such limits.

(2) The prescribed authority may outsource the work of survey and investigation to, or seek the technical expertise from, the Central Water Commission for the purposes of making a survey of the area as required under sub-section (1).

(3) On the basis of such survey and investigation, the prescribed authority shall delineate the areas which are subject to flooding including classification of land and shall prepare charts and registers indicating the areas delineated.

77. Power to enter. —(1) It shall be lawful for the prescribed authority or any officer specially authorised by it in this behalf to—

- (a) enter upon and survey and take levels of any land within his jurisdiction ;
- (b) mark such levels, boundaries and lines by placing marks or boundary stones ;
- (c) measure the land ;
- (d) cut down and clear away any part of standing crop, fence or jungle where the survey cannot be completed and the levels taken without such cutting down or clearance ; and
- (e) do all other acts necessary for the purposes of ascertaining the limits referred to in sub- section (1) of section 76.

(2) Notwithstanding anything contained in sub-section (1), no officer shall enter any building or open any enclosed premises or garden attached to a dwelling house without previously giving the owner or occupier of such building or premises a notice in writing of his intention to do so.

(3) For any damage caused to the standing crop, trees, building or any other property as a result of any operation under this section, the owner or occupier shall be paid compensation in accordance with the procedure laid down under section 88.

78. Calling of objections. —(1) After receipt of delineation report from the prescribed authority prepared under sub-section (3) of section 76, the Authority shall publish the report together with the prohibitions and restrictions proposed to be imposed on the use of land covered under the flood basin for information of general public and call for objections within a specified period as regards the area included in the flood basin and the proposed prohibitions and restrictions on the use of land.

(2) The Authority shall, after considering the objections, if any filed, and after giving the aggrieved party a reasonable opportunity of being heard, pass orders thereon including any modifications or alteration in the limits of the proposed delineation and also to the proposed prohibitions and restrictions, as the Authority may deem fit and proper.

(3) After passing of orders under sub-section (2), the Authority shall recommend to the Government for declaration of the specified area as flood basin and also the extent of prohibitions and restrictions required to be imposed on the use of land covered under the flood basin.

79. Notification of flood basin.—(1) After receipt of recommendations from the Authority under sub-section (3) of section 78, the Government shall, by notification, declare the specified area as flood basin and specify the prohibitions and restrictions on the use of land covered under such flood basin.

(2) The prescribed authority shall, on the issue of notification under sub-section (1), cause public notice of the substance of such notification to be exhibited at conspicuous places for information of the general public and shall also give notices individually to the owners or occupiers of the land.

(3) The prescribed authority shall make available the records, charts, maps, registers and such other documents showing the river channel, flood channel and the flood basin area specifying the nature and extent to which the use of the area is prohibited or restricted in the office for inspection by the general public during office hours.

80. Superintendence of embankments.— The prescribed authority may—

- (a) cause any embankment which adjoins or connects public embankments, or forms by junction with them part of a line of embankments, or is necessary for the protection of the neighbouring land, to be taken charge of and kept up by the Government ;
- (b) cause any private embankment or other structure which endangers the stability of a public embankment or obstructs the beneficial drainage of the concerned area to be removed ;
- (c) change, when necessary, the line of any public embankment or make a new embankment ;
- (d) enlarge any public embankment after acquiring land, if necessary, under the State Land Acquisition Act, Samvat 1990 and do all acts necessary and proper for the maintenance thereof ;
- (e) forbid raising of, or alterations to, an embankment ;
- (f) allow the construction of a private embankment of approved plan and design within a specified period ; and
- (g) enter upon any land and use it to control a flood or breach of an embankment.

81. *Control of bed and banks.* —(1) The control of the bed and banks of all water sources, navigation channels, intake channels, city channels and flood spill channels together with all works that affect the hydraulic conditions in the State shall be under the Irrigation and Flood Control Department.

(2) No reclamation or plantation in the bed or on the banks of a water course, navigation channel, intake channel, city channel or flood spill channel shall be permissible except under an authorisation by the prescribed authority.

(3) No extraction of any kind of material shall be made by any person in the bed or on the banks of any water source, navigation channel, intake channel, or flood spill channel without the identification of the site of extraction by an officer specifically empowered in this behalf by the prescribed authority, who shall before identifying such site or location ensure that—

- (a) the extracted material is in a controlled quantity ;
- (b) such extraction does not affect the flow of the water source ;
- (c) such extraction does not affect the functioning of water supply or irrigation schemes in the vicinity ;
- (d) such person undertakes to remove the extracted bed material simultaneously in order to ensure normal flow of water in the concerned water source.

(4) No building, railing or platform shall be constructed on the slopes of public or private embankments :

Provided that the prescribed authority or such other officer as may be specially authorised by it in this behalf, may accord permission to the construction of railings or platforms on any such slopes of public or private embankments subject to the conditions specified in the permission :

Provided further that in the case of any construction on any such public embankment, the prescribed authority shall fix a rent for the use of the land occupied by such construction.

(5) Any person putting up railings or constructing a platform in pursuance of permission granted under sub-section(4) shall maintain properly and keep in good state and repair the slopes of the embankment on which such railings or platforms are constructed.

(6) The officials of the Irrigation and Flood Control Department shall have access at all times to such slopes for purposes of inspection and repair.

82. *Traffic on embankments.*— No vehicular traffic shall be allowed on embankments except with the permission of the prescribed authority.

83. *Power to remove obstruction.* —(1) No person shall encroach upon, or cause any obstruction to, an embankment or slope thereof or the water-way of any water source.

(2) The prescribed authority, or any other person authorised by him in this behalf, may issue an order to the person making encroachment or causing obstruction or having control over any such encroachment or obstruction to remove such encroachment or obstruction within the time to be specified in the order.

(3) If within the time so specified, such person does not comply with the order, the prescribed authority or the officer authorised by him in that behalf, may remove such encroachment or obstruction and if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal, such expenses shall be recovered from him as arrears of land revenue.

(4) In removing the encroachment or obstruction, the prescribed authority or such officer as authorised by him to remove such encroachment or obstruction may, if necessary, requisition the help of the police.

84. *Excavation in lands.*— It shall be lawful for the Irrigation and Flood Control Department to make excavations in land owned, occupied or held by any person, department, Corporation, Company or any other authority up to a depth of two feet and remove the earth so excavated therefrom for the purpose of construction and maintenance of an embankment.

85. *Special measures when danger of flood.* —(1) Whenever it appears to the Government that it is necessary to take measures for the purpose of protecting life and property from the danger caused, or threatened to be caused, by floods in any area or locality, the Government may by order require all owners and occupiers of land in such area or locality to carry out such measures and for such period as may be specified in the said order.

(2) During the period specified in the order referred to in sub-section (1), any officer authorised by the Government in this behalf may, by a general or special order, require a Tehsildar of the Tehsil, or a Lambardar of the village specified in such order to furnish as many labourers as to the said officer as

may be necessary and such labourers shall be paid wages at a rate which shall not be less than minimum wages fixed by the Government from time to time.

(3) When any requisition has been made to a Tehsildar or a Lambardar under sub-section (2), every labourer ordinarily residing within the Tehsil or village shall be liable to supply and to continue to supply his labour for the purposes it is requisitioned.

86. *Safety of embankments.*— For the safety of embankments and for protecting the life and property of the people, the prescribed authority shall—

- (a) cause to be constructed flood gauges at different places in a water source particularly at locations, where there are habitations, indicating thereon danger marks, in bold and legible letters to make the public aware of the danger marks ; and
- (b) to establish flood control rooms with warning system in all such areas which are prone to erosion or submergence in case of high floods in order to combat any emergent situation arising during the high floods in any water source.

87. *Extraction of bed material.*—(1) Notwithstanding anything contained in any law for the time being force in the State, no licensee shall extract the bed material of any kind from any water source without the identification of the site of extraction by an officer specifically empowered in this behalf by the prescribed authority.

(2) The officer empowered under sub-section (1) shall, before identifying the site of extraction, satisfy himself that such extraction of material does not in any way change the course of the water source and that by such extraction no water supply or irrigation scheme shall be adversely affected.

(3) The officer empowered under sub-section (1) shall ensure that the bed material so extracted is removed on daily basis by the licensee so as to maintain regular or normal flow of water in the water source.

CHAPTER V

AWARD OF COMPENSATION FOR DAMAGES

88. *Compensation for damage.*— Compensation shall be awarded for the damages caused to any standing crop, tree, building or any other property

by the entry, or in the execution of any work or operation under section 12, clause (d) of section 26, sub-section (2) of section 28 and clause (d) of sub-section (1) and sub-section (3) of section 77.

89. *Procedure for award of compensation.* —(1) The Assistant Executive Engineer, or any person on his behalf, entering any land, building or other property shall ascertain and record the extent of the damage, if any, caused by such entry, or in the execution of any work or operation to any crop, tree, building or any property and the value of material taken or utilised and, within one month from the date of such entry, compensation shall be tendered by him to the owner or occupier of the property.

(2) If such owner or occupier is not satisfied with compensation provided under sub-section (1), he may inform the Assistant Executive Engineer concerned accordingly and the Assistant Executive Engineer shall forthwith refer the matter for the purpose of determining the amount of compensation to the Executive Engineer.

(3) The prescribed authority may, at any time, or on the application made by any aggrieved person, revise or modify the order of the Assistant Executive Engineer under sub-section (1) or the Executive Engineer under sub-section (2) and its decision thereon shall be final.

CHAPTER VI

Usage of Water by installation of a Unit

90. *Installation of Unit for usage of water.*— Save as otherwise provided under Chapters III, IV and VII, no person, group of persons, government department, local authority, corporation, company, society or any other body, by whatever name called (hereinafter in this Chapter called ‘the user’), shall install a unit requiring usage of water of any water source except under a licence issued by the licensing authority in accordance with the provisions provided hereinafter in this Chapter.

91. *Preparation of scheme for usage of water by the user.* —(1) Any user intending to install a unit requiring usage of water for the purpose of—

- (a) generation of electricity ;
- (b) irrigation of land ;

- (c) drinking purposes (domestic, commercial, industrial or institutional) ;
- (d) running of water mills ; and
- (e) exploration and exploitation of ground water,

shall prepare scheme and submit to the Authority accompanied by such fee and service charges as may be fixed by the Authority for approval.

(2) The said scheme shall specifically indicate the following—

- (a) the location of the unit ;
- (b) the source of water to be used ;
- (c) the purpose for which the unit is to be installed ;
- (d) the type of the unit whether domestic, commercial, industrial or for trading purposes ;
- (e) the quantity of water required for such unit ; and
- (f) the period for which the water is required.

92. *Approval of the scheme.* —(1) After receipt of the scheme from a user, the Authority shall consider the viability of the scheme by taking into the account the following factors, namely :—

- (a) whether the purpose of the proposed scheme is consistent with the State Water Policy ;
- (b) whether the works required to be executed for the proposed scheme are detrimental to any existing, ongoing or proposed water supply, irrigation, flood control or any other scheme in the area ;
- (c) whether the proposed scheme is consistent with the requirements of drinking water, irrigation, navigation, flood control or any other public purpose,

and make such inquiries and undertake such other studies, as it may deem necessary.

(2) If the Authority is satisfied that the proposed scheme is viable and meets all the requirements, it may, either approve the scheme as submitted by the user or with such modification as it may deem fit, or reject the same by assigning grounds for such rejection :

Provided that in case of a scheme relating to use of water for generation of electricity, the Authority shall submit its recommendations to the Government for approval of the scheme.

(3) If the user is aggrieved by an order passed by the Authority modifying or rejecting his scheme, he may prefer an appeal to the Government within a period of thirty days from the date of such order and the decision of the Government thereon shall be final.

(4) In case of a scheme relating to use of water for generation of electricity, the Government may, on receipt of the recommendations from the Authority, take a decision either approving the scheme with or without modifications or rejecting the same :

Provided that no order shall be passed under this sub-section without the agreement of the Power Development Department and in case there is no such agreement, the scheme shall be submitted for orders of the Cabinet whose decision shall be final and binding.

93. *Information to the User.*— After the scheme is approved by the Authority under sub-section (2) of section 92 or by the Government under sub-section (4) of section 92, the Authority shall inform the user accordingly and require him to—

- (a) obtain a licence for use of water under section 96 ;
- (b) execute an agreement in such form and manner with the prescribed authority as may be prescribed ; and
- (c) pay such fee and water usage charges as fixed under Chapter XI of the Act.

94. *Prohibition on installation of a unit.*— No user shall install a unit requiring usage of water without adhering to the requirements of section 97.

95. *Ceiling on allocation of water.*— The Authority shall fix the minimum and maximum ceiling of water to be allocated to a user for—

- (a) generation of electricity (hydro-electric project) ;
- (b) irrigation of land ;
- (c) drinking purposes; (domestic, commercial, industrial or institutional) ;
- (d) exploration of ground water ; and
- (e) utilization of water for other purposes.

96. *Licence for usage of water.*—No person shall install a unit, requiring usage of water or in any other way use the water, for—

- (a) distribution of water ;
- (b) undertaking trading in water directly or indirectly ;
- (c) construction of dams on any water source ; and
- (d) exploration or exploitation of ground water,

unless he is authorized to do so by a licence, issued under section 97.

97. *Grant of licence.*—A user intending to use the water for any purpose specified in sub-section (1) of section 91 and section 96, may make an application accompanied with such fee as may be prescribed to the licensing authority for grant of licence under the Act :

Provided that in case the user is a government department, a local authority or a corporation owned and financed by the Government, it shall be deemed to be a licensee under the Act and shall not be required to obtain a licence under the Act.

98. *Procedure for grant of Licence.* —(1) After receipt of an application for grant of licence under section 97, the licensing authority shall, as soon as possible, publish a notice in at least two daily newspapers describing the name and address of the person to whom it proposes to issue the licence with all particulars of the scheme and invite objections from the persons who are likely to be affected by the execution of such scheme.

(2) After considering the objections, if any, and the suggestions received in response to the notice as provided in sub-section (1) and after ascertaining that—

- (a) the scheme of the applicant has been approved by the Authority or the Government, as the case may be ;
- (b) the applicant complies with the requirements of capital adequacy and credit worthiness ; and
- (c) the applicant possess a good moral conduct and is not involved in any criminal activity,

the licensing authority may issue a licence specifying therein the following—

- (i) the quantity of water to be used by the licensee ;
- (ii) the works for which the licence is issued ;
- (iii) the source of water to be used by the licensee ;
- (iv) in case of dam, the specifications thereof ;
- (v) the amount of fee to be paid by the licensee ;
- (vi) the period of validity of the licence ; and
- (vii) other terms and conditions of the licence :

Provided that in case the area proposed to be covered under the scheme for which the licence is sought includes the whole or any part of any cantonment area, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Central Government for defence purposes, the licensing authority shall seek no objection to the grant of licence from the concerned Ministry of the Central Government before issuing such licence.

(3) If the licensing authority is of the opinion that the applicant does not qualify for grant of licence under the provisions of the Act or if it upholds the objections filed by any person against the grant of such licence, it may reject the application for grant of licence after recording the reasons therefor.

(4) Any person aggrieved by the decision of the licensing authority either granting the licence or rejecting the same may, where the Government is not the licensing authority, prefer an appeal to the Authority within a period of thirty days from the date of such decision and the Authority shall decide the said appeal after giving the aggrieved party a reasonable opportunity of being heard and its decision shall be final.

(5) Where the licensing authority is the Government, the aggrieved person may prefer a review petition within a period of thirty days from the date of decision, either granting the licence or rejecting same, and the decision of the Government on such review petition shall be final.

99. *Licensee not to do certain things.* —(1) No licensee shall, without prior approval of licensing authority :—

- (a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee or ;
- (b) merge his utility with the utility of any other licensee.

(2) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the licensing authority.

(3) Before permitting any licensee to undertake any transaction or merge his utility under sub-section (1), or assigning his licence or transferring his utility under sub-section (2), the licensing authority, in case it is not the Government, shall seek the approval of the Authority.

100. *Amendment of licence.* —(1) Where in its opinion the public interest so demands, the licensing authority may, on an application made by the licensee or otherwise, make such alternations and amendments in the terms and conditions of the licence as it thinks fit :

Provided that no such alternations or amendments shall be made to the detriment of the interests of the licensee except after giving the licensee an opportunity of being heard :

Provided further that where such alteration or amendment is made on the request of the licensee, the licensing authority shall, before making such alternation or amendment in the licence, publish a notice in at least two daily newspapers specifying the modification or alteration sought to be made by the licensee, invite objections from the persons likely to be affected by such modification or alteration and consider such objections, if any received.

101. *Revocation of licence.* —(1) If the licensing authority, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely :—

- (a) where the licensee, in the opinion of the licensing authority, makes wilful or prolonged default in doing anything required of him by or under the Act or the rules or regulations made thereunder ;
- (b) where the licensee violates any of the terms and conditions of his licence, the violation of which is expressly declared by such licence to render it liable to revocation ;
- (c) where the licensee fails, within the period fixed in this behalf by the licence, or any longer period which the licensing authority may have granted therefor, to—
 - (i) show to the satisfaction of the licensing authority that the licensee is in a position to discharge fully and efficiently the duties and obligations imposed on him by his licence ; or
 - (ii) make the deposit or furnish the security or pay the fees or other charges required by his licence ;
- (d) where in the opinion of the Authority or the Government, as the case may be, the financial position of the licensee is such that he is unable to discharge fully and efficiently the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the licensing authority may, on application, or with the consent, of the licensee revoke his licence as to the whole or part of his area of operation on such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the licensing authority has given to the licensee not less than three months notice in writing specifying the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

102. *Duties, obligations and responsibilities of the licensee.* —(1) It shall be the duty of the licensee to develop and maintain an efficient coordinated system for the economical and optimum utilization of water and distribution of the same in accordance with the provisions of the Act.

(2) The licensee shall be liable to pay water usage charges (tariff) for the water utilized as per the provisions of the Act.

(3) Where any user has constructed an irrigation scheme, drinking water supply scheme, dam (for purpose of generation of electricity), or any other hydraulic structure or installed any unit for usage of water prior to the commencement of the Act, such user shall, within a period of six months from the date of commencement of the Act, apply for a licence under the Act and the licensing authority shall pass an order with regard to grant of license within a period of six months from the date of receipt of application in accordance with the provisions of the Act.

(4) If the user as mentioned in sub-section (3) fails to apply or obtain a licence within the time stipulated therein, the prescribed authority shall forthwith stop the supply of water to him until he obtains a licence as per the provisions of the Act.

(5) Every licensee shall be under an obligation to ensure the safety of the life and property of inhabitants of the area under the operation of the scheme, and of water sources and hydraulic works and protection thereof against any damage or danger caused or likely to be caused by the uncontrolled release of water or hazardous waste caused by the collapse or failure of any unit, dam, barrage or hydraulic work.

(6) Every licensee shall be bound to allow the licensing authority or any other officer authorised by licensing authority to have access at any time to the design, construction, alteration, repair, maintenance and operation of the licensed unit for its satisfaction.

(7) Every licensee shall provide efficient services to the consumers as required under the terms and conditions of the licence.

(8) Every licensee shall be bound to follow and observe such safety measures as may be specified by the Authority under section 105.

103. *Grievance redressal mechanism.* —(1) Every licensee shall establish a mechanism for redressal of the grievances of the people or consumers in accordance with such guidelines as may be specified by the Authority.

(2) Any person who is aggrieved by non-redressal of his grievances under sub-section (1), may make a representation for redressal of his grievances to the Authority.

(3) The Authority shall settle the grievances of such person within such time and in such manner as it may think fit.

104. *Directions to the Licensee.*— The Government may, in extraordinary circumstances, require a licensee to operate and maintain his unit in accordance with such directions as may be issued by the it from time to time.

Explanation:—For purposes of this section, the extraordinary circumstances mean the circumstances arising out of the threat to the security of the state, public order or a natural calamity.

105. *Control and safety provisions.* —(1) The Authority may, in consultation with the Government, specify suitable measures to be adopted by a licensee which are necessary for—

- (a) protecting the public, including the persons engaged in the usage of water for the purposes of generation of power, running of water in irrigation and water supply units, hydraulic works, exploration of ground water and construction activities on such units for purposes of the usage of water ;
- (b) eliminating or reducing the risk of personal injury to any person or damage to property of any person during the currency of licence ;
- (c) ensuring the safety of the life and property of the inhabitants of the area under the operation of the scheme, water source, hydraulic work and protection thereof against any damage or danger caused or likely to be caused by the uncontrolled release of water or hazardous waste caused by the collapse or failure of any unit, dam, barrage or hydraulic work.

(2) For purposes of clause (c) of sub-section (1), the licensing authority or any officer or authority authorised by it shall exercise all powers and perform all functions and duties that are necessary for ensuring that the licensee complies with the safety measure specified by the Authority under sub-section (1) or those specified in the terms of the licence.

(3) The licensing authority may from time to time require re-examination and modification of designs, plans and specification of initial construction or any subsequent alteration, repairs, maintenance and operation licensed unit in consultation with an expert having experience in the design and construction of such units or works.

(4) The licensing authority may, by notice in writing given to the licensee, require him to—

- (a) cause periodic inspection carried out by an expert, to the satisfaction of the licensing authority and in accordance with the procedure and at such intervals, as the licensing authority may specify, of the water usage unit ;
- (b) cause to be carried out by an expert having experience in the design and construction of such units or works a review of the design, construction and operating procedures of the water usage unit and furnish a report of the same to the licensing authority ;
- (c) carry out such repairs or take such measures as specified in the notice to ensure the safety of the unit and the protection of life and property that is likely to be endangered by the uncontrolled release of water or hazardous waste likely to be caused by the collapse or failure of the unit.

(5) The licensing authority shall forward a copy of notice given under sub-section (4) to the Authority for information and record.

(6) The licensee shall pay such fee and such other charges as the Authority may fix in this behalf, to the licensing authority for undertaking the following activities :—

- (a) periodical inspection of the unit by the licensing authority or any other officer or expert empowered in this behalf ;
- (b) any other activity performed or caused to be performed by the licensing authority under this section in relation to the unit of the licensee.

106. *Location of Dams to be away from populated area.*— While issuing a licence for establishment of a unit for generation of electricity, the licensing authority shall ensure that—

- (a) the site of the dam of such unit is reasonably away from the thickly populated area ;
- (b) the licensee executes all anti-erosion works, bunds or other mechanisms in case the outgoing water from the turbine after generating electricity flowing down the dam site is likely to cause erosion of land of, or inundation or submergence of, any area ;
- (c) the licensee installs and operates automatic warning system with hooters or sirens so as to warn the people regarding operation of ejection of silt from the dam ; and

- (d) the licensee undertakes to deploy regular guards for giving advance warning to the people living in the adjoining villages so that they evacuate the area during emergent situations.

107. *Power of licensing authority under this Chapter.*— For the purpose of this Chapter, the licensing authority shall have the following powers in relation to a unit or the licensee—

- (a) to measure and record the water resources of both surface and underground used by a licensee ;
- (b) to permit use water from any watercourse, or any other source for establishment of a unit by a licensee ;
- (c) to allow diversion, interception and storage of water coming from any water source ;
- (d) to allow usage of surface water or ground water ;
- (e) to enter upon any land or premises for the purposes of—
 - (i) making or carrying out inspection, tests, investigations, surveys, experiments, boring or drilling operations, explorations, etc. ;
 - (ii) satisfying itself with design, construction, operations and maintenance or alterations of licensed units ; and
 - (iii) taking all steps and doing all acts and things connected with, or incidental to, the exercise or performance of the powers, functions and duties conferred by or under the Act ;
- (f) to satisfy itself with blasting operations ; and
- (g) to take all steps and do all acts and things as are necessary for or in connection with the performance of the operations specified in this section.

108. *Liability for failure or collapse of water usage unit.* —(1) The licensee shall be responsible for any injury, loss or damage caused by or resulting from the total or partial failure or collapse of, or the escape of hazardous waste from the unit and shall be liable to make good such loss,

injury or damage and bear all expenses to be incurred on re-construction or restoration of the injured, lost or damaged infrastructure apart from any compensation that may be payable to the sufferers under any law for the time being in force.

(2) The approval of the design, construction, operation and maintenance of the unit by the Authority or the Government, as the case may be, shall not absolve the licensee from the liability under sub-section (1).

109. *Special Works.* —(1) For the establishment of a unit for usage of water, the licensing authority may, if it considers it necessary or on the request of a licensee, permit the licensee to undertake certain special works which may include the following :—

- (a) diversion of a water course ;
- (b) reclamation of water-course, lake or swamp land or part thereof ;
- (c) works associated with a mining development or mining operations ; or
- (d) any other work connected with or necessary for installation of the unit by a licensee.

(2) A licensee may apply to the licensing authority accompanied by such fee as may be prescribed, for obtaining permission for undertaking any such special work justifying the necessity and relation of such work with respect to the approved unit with detailed description in regard to—

- (a) the lawful ownership and possession of the land proposed to be used or operated ;
- (b) land to be acquired for the use or operation ;
- (c) easements to be acquired, in connection with the proposed works ;
- (d) the persons to be benefited or likely to be affected by execution of such special works ; and
- (e) any other information as may be required by the licensing authority.

(3) The application shall also be accompanied by appropriate plans, drawings and specification containing information in regard to the execution of special works.

(4) On receipt of the application, the licensing authority (in case of licensing authority not being the Government) shall examine the proposal and submit the same alongwith its recommendations thereon to the Authority for approval.

(5) Where the licensing authority is the Government, it may forward the application received under sub-section (2) to the Authority for its opinion and specific recommendation.

(6) The Authority may seek such further information with respect to or in clarification of any aspect of the proposal submitted to it under sub-section (4) or forwarded to it under sub-section (5) from the licensing authority, as the Authority may think fit.

(7) On approval of the proposal by the Authority under sub-section (4) or on receipt of recommendations of the Authority under sub-section (5), the licensing authority shall grant permission for execution of special works.

110. *Powers and functions of the licensing authority and the authorised officer.* —(1) For carrying into effect the provisions of this Chapter, the licensing authority or any officer authorised by it, shall have the following powers and functions, namely :—

- (a) to enter any land, premises, unit or area, without notice during day time for making any investigation, inquiry, inspection or examination to ensure that the provisions of the Act are not contravened ;
- (b) to require the licensee to execute, fix, remove, replace, renew, substitute, alter, repair, clean or examine any plant, equipment, machinery or work ;
- (c) to take account of the quantity of water allocated and used for ensuring that the water used is in accordance with the quantity allocated or permitted in the terms of a licence, permit or any other authorisation under the Act ;
- (d) to regulate the supply of water under a licence, permit or any other authorisation under the Act ;
- (e) to take all steps and do all such acts as are necessary for—
 - (i) the purpose of taking measurements and making records of usage of the natural water resources ;

- (ii) the conservation and regulation of water ;
 - (iii) the prevention of undue, excessive, illegal or improper use, diversion or waste of water ;
 - (iv) the preservation of water from pollution ; and
 - (v) the protection of and prevention of interference with the bed, banks, channels or other hydraulic works over or within which the water flows or is contained ;
- (f) to use such force as may be necessary in the exercise of the powers and performance of the functions and duties conferred by or under the Act ;
 - (g) to take all steps and do all such acts and things as are necessary in the exercise of the powers and performance of the functions and duties conferred by or imposed under the Act;
 - (h) to exercise such other powers and perform such other functions and duties as the Government may by notification may specify.

(2) The power conferred by this section includes the power to break open the door of any premises where sinking of well or extraction/use of ground water may be going on :

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so.

(3) The provisions of the Code of Criminal Procedure, Samvat 1989 shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under the said Code.

CHAPTER VII

Ground Water Development and Management

111. *Notification of areas to regulate and control development of ground water.* —(1) If the Authority is of the opinion that it is necessary or expedient in the public interest to control, and/or regulate, the extraction or the use of groundwater in any form in any area, it may advise the Government to notify the area for the purposes of the Act with effect from such date as may be

specified therein. On receipt of such advice, the Government may issue a notification to this effect :

Provided that the date so specified in the notification shall not be earlier than three months from the date of publication of the said notification.

(2) Every notification shall, in addition to its publication in the Government Gazette, be published in at least one daily regional language newspaper having wide circulation in the State and also be served in such manner as the Government may think fit and all or any of the following modes may be followed in affecting such service, namely :—

- (a) by affixing a copy of the notification at some conspicuous part of the local body located in the said area ; and
- (b) in such other manner as may be specified.

(3) If in the opinion of the Authority, the availability of the ground water has improved in a notified area, it may advise the Government to de-notify such area and the Government may do so in accordance with the procedure as may be prescribed in this behalf.

(4) The Authority shall also take steps to ensure that exploitation of ground water resources does not exceed the natural replenishment to the aquifers and wherever there is a mismatch, steps shall be taken to ensure augmentation of ground water resources in addition to regulatory measures.

(5) The Authority shall maintain and upkeep the data-base on ground water related information.

112. *Grant of permit to extract and use ground water in the notified area.* —(1) Any user of ground water desiring to sink a well in the notified area for any purpose, either on personal or community basis, shall apply to the prescribed authority for grant of a permit for this purpose, and shall not proceed with any activity connected with such sinking unless a permit has been granted by such authority :

Provided that such user shall not have to obtain a permit if the well is proposed to be fitted with a hand operated manual pump or water is proposed to be withdrawn by manual devices.

(2) Every application under sub-section (1) shall be made in such form and shall contain such particulars as may be specified.

(3) On receipt of an application under sub-section (1) if the prescribed authority is satisfied that it shall not be against public interest to do so, it may, subject to such conditions and restrictions as may be specified, grant a permit authorizing the extraction and use of the water but where it is satisfied that it is not in public interest to do so, it may refuse to grant any such permission :

Provided that no person shall be refused a permit unless he has been given an opportunity of being heard.

(4) The decision regarding the grant or refusal of the permit shall be intimated by the prescribed authority to the applicant within a period of 90 days from the receipt of the application :

Provided that where the prescribed authority fails to communicate its decision within the said period, it shall be deemed that the permission has been granted.

(5) In granting or refusing a permit under sub-section (3), prescribed the authority shall have regard to the—

- (a) purpose for which water is to be used ;
- (b) existence of other competitive users ;
- (c) availability of ground water ;
- (d) quantity of ground water to be drawn ;
- (e) quality of ground water with reference to use ;
- (f) spacing of ground water structures keeping in consideration the purpose for which water is to be used ;
- (g) long term behaviour of ground water level ;
- (h) likelihood of adversely affecting water availability of any drinking water source in its vicinity ; and
- (i) any other factor relevant thereto.

(6) The permit shall be in such form as may be prescribed.

113. *Duties, obligations and responsibilities of user agency/owner of a well.* —(1) Every person or agency desiring to sink a well shall—

- (a) inform the prescribed authority by at least 15 days prior notice in writing about his intension to do so ;
- (b) erect a signboard on commencement of work near the well site indicating complete address of the user agency or the owner of the well and the drilling agency employed to sink the well ;
- (c) erect barbed wire fencing or any other suitable barrier around the well during execution of work ;
- (d) construct a concrete platform measuring 0.5 x 0.5 x 0.6 metre (0.3 metre below ground level and 0.3 metre above ground level) around the well casing ;
- (e) cap the well assembly by welding steel plates or with nuts and bolts.

(2) On completion of work, such person or agency shall fill up the mud pits or channels and restore the ground condition to the position as existed before commencement of drilling operations or sinking of the well.

(3) If any user agency or owner of a well abandons such well, he shall fill up the abandoned well with clay, sand, boulders, pebbles or such other material from the bottom of such well to the ground level and obtain a certificate from the Executive Engineer concerned that such abandoned well has been properly filled up and capped.

114. *Registration of existing users in notified areas.* —(1) Every existing user of ground water in the areas notified under sub-section (1) of section 111, shall within a period of one hundred twenty days from the date of notification, apply to the prescribed authority for grant of a Certificate of Registration recognizing its existing use in such form and in such manner as may be prescribed :

Provided that the prescribed authority may entertain any such application after the expiry of the said period of one hundred twenty days, if it is satisfied that the user was prevented by sufficient cause from submitting application in time :

Provided further that the existing user shall not be required to apply for registration if the existing well is fitted with a hand operated manual pump or water is withdrawn by manual device.

(2) The details to be furnished in an application under sub-section (1) shall include the following, namely :—

- (a) the description of the source of ground water, such as type of well, its exact location ;
- (b) the lifting device used ;
- (c) the quantity of ground water, withdrawal and hours of operation per day ;
- (d) the total period of use in each year ;
- (e) the purpose for which ground water is being extracted ;
- (f) in case of irrigation well, the location and extent of area likely to be irrigated ; and
- (g) the details of the services involved in addition to the quantities of ground water extracted, the diversion or the pumping points and their location.

(3) On receipt of an application under sub-section (1), if the prescribed authority is satisfied that it shall not be against the public interest to do so, it may grant, subject to such conditions and restrictions as may be specified, a Certificate of Registration authorizing the continued use of the water or refuse to grant such Certificate :

Provided that no person shall be refused a Certificate of Registration unless he has been given an opportunity of being heard.

(4) The decision regarding the grant or refusal of the Certificate of Registration shall be intimated by the prescribed authority to the applicant within a period of ninety days from the receipt of the application :

Provided that where the prescribed authority fails to communicate decision within the said period, it shall be deemed that the Certificate of Registration has been granted.

(5) In granting or refusing a Certificate of Registration under sub-section (3), the authority shall have regard to the factors specified under sub-section (5) of section 112.

(6) The Certificates of Registration shall be in such form as may be prescribed.

(7) Pending communication by the prescribed authority of the decision on an application under sub-section (1), every existing user of ground water in the area notified under sub-section (1) of section 111 shall be entitled to continued use of the ground water in the same manner and to the same quantity as he was entitled prior to the date of his application.

(8) If a registered well becomes defunct, this fact shall immediately be brought to the notice of the prescribed authority by the user of ground water.

115. *Registration of user of new wells in non-notified area.*— From the commencement of the Act, all wells sunk in the State shall be registered including the wells in the areas not notified under sub-section (1) of section 111, except those excluded under clause (zzj) of section 2 or brought to the notice of prescribed authority.

116. *Registration of Drilling Agencies.* —(1) Every drilling agency, whether owned by the Government or any local body or a private individual, shall register itself with the prescribed authority in such manner as may be prescribed.

(2) Every owner or operator of a drilling agency shall follow the instructions issued by the prescribed authority from time to time.

117. *Power to alter, amend or vary the terms of the permit or Certificate of Registration.*— At any time after a permit or Certificate of Registration, as the case may be, is granted, the prescribed authority may, for technical reasons, alter, amend or vary the terms of the permit or Certificate of Registration, as the case may be :

Provided the user of ground water shall be given an opportunity of being heard before issuance of any such order :

Provided further that before taking such action, the prescribed authority shall ensure that the standing crops are not damaged.

118. *Cancellation of permit or Certificate of Registration.*— If the prescribed authority is satisfied either on a reference made to it in this behalf or otherwise, that—

- (a) the holder of a permit or Certificate of Registration granted, under sub-section (3) of section 112, or sub-section (3) of section 114, has, without reasonable cause, failed to comply with the conditions subject to which the permit or Certificate of Registration has been granted or has contravened any of the provisions of the Act or the rules made thereunder ; or
- (b) a situation has arisen which warrants limiting the use or extraction of ground water,

it may, without prejudice to any other penalty to which the holder of the permit or of the Certificate of Registration may be liable under the Act, after giving such holder an opportunity to show cause, cancel , alter or modify the permit or Certificate of Registration, as the case may be.

119. *Power to enter, inspect or seize etc.* —(1) The prescribed authority or any person authorized by it in writing in this behalf, shall have the power to—

- (a) enter on any property (private or government owned) with the right to investigate and make any measurements concerning the land or the water located on surface or underground ;
- (b) inspect the well which has been or is being sunk and the soils and other materials excavated therefrom ;
- (c) take specimen of such soils or other materials or of water extracted from such wells ;
- (d) require by order in writing the persons sinking a well to keep and preserve in the prescribed manner specimens of soils or any material excavated therefrom for such period not exceeding three months from the date of completion or abandonment of the work, as may be specified by the prescribed authority or the person so authorised, as the case may be and thereupon such person shall comply with such requisition ;
- (e) inspect and to take copies of the relevant record or documents and ask any question necessary for obtaining any information (including diameter or depth of the well which is being or has been sunk; the level at which the water is or was stuck and subsequently restored/ rested, the types of strata encountered in the sinking of the well and the quality of the water stuck) required for carrying out the purposes of the Act ;

- (f) require, by order in writing, the user of ground water to install water measuring device on any ground water extraction structures :

Provided that where the user of ground water does not comply with the requisition issued to him within a period of sixty days, the prescribed authority itself may install such water measuring device and the cost so incurred shall be recoverable from the defaulting user of ground water as arrears of land revenue ;

- (g) seize any equipment/device utilized for illegal sinking and destroy the work executed fully or partly ;
- (h) require, by order in writing, any user of ground water who does not comply with the provisions of the Act and rules framed thereunder to close down the extraction of ground water or destroy any hydraulic work found to be illegal according to the provisions of the Act or the rules framed there under :

Provided that where the user of ground water does not comply with the requisition issued to him within a period of sixty days, the prescribed authority itself may carry out the necessary work and recover the cost from the illegal user of ground water as arrears of land revenue ;

- (i) enter and search with such assistance, as it considers necessary, any place in which it has reason to believe that offence under the Act has been, or is being, committed and, direct by an order in writing, the person who has been, or is, committing the offence not to extract or use the ground water from a specified period not exceeding thirty days ;
- (j) exercise such other powers as may be necessary for carrying out the purposes of the Act or the rules made hereunder.

(2) The power conferred by this section includes the power to break open the door of any premises where sinking of well or extraction/use of ground water may be going on :

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so :

Provided further that if any such place is an apartment in the actual occupancy of a woman who, according to custom, does not appear in public, such officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the apartment.

(3) The provisions of the Code of Criminal Procedure, Samvat 1989 shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under the said Code.

120. *Service of orders, etc.* —(1) Every order issued under sub-section (1) of section 119 shall be served,—

- (a) by giving or tendering the order or by sending it by post to the user for whom it is intended, or
- (b) if such user cannot be found,—
 - (i) by affixing the order on some conspicuous part of his last known place of residence or place of business, or
 - (ii) by giving or tendering the order to some adult male member of his family, or
 - (iii) by causing it to be affixed on some conspicuous part of the land or building in which the well is being sunk.

(2) Where the person on whom an order or a notice is to be served is a minor, service upon his guardian in the manner provided in sub-section (1) shall be deemed to be service upon the minor.

121. *Bar to claim compensation.*— No person shall be entitled to claim any damages or compensation from the Government for any loss sustained by him by virtue of any action taken by any authority under the Act.

122. *Rain water harvesting for ground water recharge.* —(1) The Authority may advise the Government about measures for replenishment of ground water which may include, but shall not be restricted to, the following :—

- (a) identification of areas worthy of ground water recharge ;

- (b) strategy for promoting rain water harvesting for ground water recharge in urban as well as rural areas ;
- (c) design of structures considered suitable for rain water harvesting ;
- (d) identification of areas where the Authority feels necessary to make provision of roof top rain water harvesting structures mandatory ;
- (e) strategy for promotion of mass awareness and training programmes on rain water harvesting and recharge to ground water.

(2) The Government shall give due consideration to the advice of the Authority.

123. *Appeals.* —(1) Any person aggrieved by a decision or action of the prescribed authority under sub-section (3) of section 112 or sub-section (3) of section 114 or sections 117 to 119 may, within a period of thirty days from the date on which the action is taken or the decision is communicated to him and on payment of such fees as may be prescribed, prefer an appeal before the Authority :

Provided that the Authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of any appeal under sub-section (1), the Authority shall after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

CHAPTER VIII

Metering

124. *Installation of meters.* —(1) The prescribed authority shall install or cause to be installed flow meters within the premises of user of water supply or at the location of every user or licensee or at such other place where the prescribed authority deems fit for purposes of measuring the supply of water and taking account of the water supplied to such user or licensee.

(2) The prescribed authority may either install or, require a user or a licensee to install a flow meter as per the specifications approved by the prescribed authority at his premises or at his location or at such other place as the prescribed authority may direct and thereafter adjust the expenditure

incurred by such user or licensee on such installation towards the water user charges payable by such user or the licensee.

125. *Injuring a meter or any fitting.*— No person shall wilfully injure or cause to be injured, any meter or any of the fittings of any meter.

126. *Fraud in respect of meters.* —(1) No person shall fraudulently or dishonestly—

- (a) alter the index of any meter, or prevent any meter from recording the actual quantity of water supplied; or
- (b) extract or use water before it has been recorded by a meter set up for the purpose of recording the same ; or
- (c) tamper a meter, install or use a tampered meter ; or
- (d) use any other device or method which interferes with accurate or proper registration, calibration or metering of water supplied ; or
- (e) do anything which results in any manner whereby water is stolen or wasted.

(2) Where there has been any such alteration, prevention, extraction or use, the existence of artificial means under the control of the consumer for causing any such alteration, prevention, extraction or use, shall be evidence of the consumer having fraudulently tampered the meter.

127. *Meter Reading.*— The prescribed authority may authorize any person to take reading of a meter installed in any premises where water is supplied or utilized under the Act.

CHAPTER IX

Water Usage Charges (Tariff)

128. *Fixation of water usage charges.* —(1) The Authority shall determine and fix the charges for—

- (a) supply of water to a consumer from any water supply scheme for domestic purposes ;
- (b) supply of water to, or use of water by, a consumer from any irrigation scheme or any water source for irrigation purposes ;

- (c) supply of water to a consumer for commercial and industrial purposes ;
- (d) supply of water to, or use of water by, a licensee under Chapter VI ; and
- (e) exploration and exploitation of ground water by a consumer or a licensee.

(2) The water usage charges fixed under sub-section (1) shall be reviewed by the Authority after every three years.

(3) The Authority may fix different water usage charges for use of water for different purposes and while determining and fixing the water usage charges, the Authority shall have regard to—

- (a) the purpose for which the water is supplied or used ;
- (b) the quantity of water supplied or used ;
- (c) the nature of use of such water by the user, whether domestic, commercial or industrial or for trading purposes ;
- (d) the timeliness of supply or use of water ; and
- (e) the periodicity of supply or use of water.

129. *Prohibition on charging higher water usage charges.* —(1) No licensee who directly or indirectly trades in water or supplies water to users on commercial basis shall charge from any user, water usage charges on rates higher than the rates fixed by the Authority under section 128.

(2) If a licensee charges a price for supply of water exceeding the water usage charges fixed by the Authority under section 128, the excess amount so charged by him alongwith 50% thereof as penalty shall be recovered by the prescribed authority from such licensee.

130. *Recovery of water usage charges.*— The prescribed authority shall recover water user charges as per the rates fixed by the Authority from every user or licensee whenever—

- (a) water is supplied or made available or used for purposes of irrigation, drinking or for any other purpose from any irrigation work or water supply scheme being run or maintained by the Government ; or
- (b) water is used by a consumer from any water source for irrigation purposes ; or
- (c) water is supplied or made available or used by a licensee for generation of electricity, irrigation of land ,drinking purposes (domestic, commercial, industrial, institutional), running of water mills, exploration of ground water or for trading in any way directly or indirectly in water.

131. *Procedure for assessment.* —(1) The Assistant Executive Engineer concerned shall prepare the assessment of water usage charges in respect of water supplied to, or used by, a user or a licensee and serve such assessment on such user or the licensee for payment of the assessed charges.

(2) If a user or licensee is not satisfied with the assessment of water usage charges made under sub-section (1), he may apply to the concerned Executive Engineer for re-assessment within a period of 15 days from the date of service of assessment order under sub-section (1).

(3) The concerned Executive Engineer may either accept the request for re-assessment and have the charges re-assessed or reject the request for re-assessment.

(4) The order passed by the concerned Executive Engineer under sub-section (3) shall be final.

(5) The user or the licensee shall pay the water user charges as assessed under sub-section (1) or as re-assessed under sub-section (2) within such time as may be specified by the concerned authority.

132. *Disconnection of supply in the default of payment.*— If any user or licensee fails to pay water usage charges due from him, the Assistant Executive Engineer may, after giving not less than 15 days clear notice in writing to such user or licensee to clear the outstanding charges and without prejudice to recover such charges, cut off the supply to such user or licensee until such charges, together with any expenses incurred on cutting off and re-connecting the supply, are paid :

Provided that where the licensee is engaged in trade of water for commercial purposes or for generation of electricity and makes a default in the payment of water charges, the Assistant Executive Engineer may, with the approval of Executive Engineer, recommend to the District Magistrate concerned for disconnecting or stopping the supply of water to such licensee until such charges, together with any expenses incurred on cutting off and re-connecting the supply, are paid by such licensee.

133. *Disconnection of supply generally.*— The Assistant Executive Engineer, may cut off the supply of any premises, area, unit or a licensee on any one of the following grounds, namely :—

- (a) if, after the receipt of a written notice from the Assistant Executive Engineer requiring him to refrain from so doing, the owner or occupier of the premises or unit, or the user or the licensee continues to use the water or permit the same to be used in contravention of the provisions of the Act or the rules ; or
- (b) if any pipe, tap, fitting connected with the supply of water to the premises, area or unit be found, on inspection by an officer authorised in this behalf, to be out of repair to such an extent as to cause so serious a waste or contamination of water that in the opinion of the Assistant Executive Engineer immediate stoppage of water supply is necessary ; or
- (c) if there is any water pipe situated within the premises or unit of a user or licensee to which no tap or other efficient means of turning the water off is attached ; or
- (d) if, by reason of a leakage in the pipe, or fitting damage is caused to the public street and immediate stoppage of water supply is necessary.

134. *Restoration of supply.*— When the supply has been cut off or turned off under section 132 or section 133, the Assistant Executive Engineer may recommend to the Executive Engineer concerned or the District Magistrate, as the case may be, that the supply of water to the premises, area, unit or the user or the licensee be restored on payment of the outstanding charges or on rectification or repair of any tap, pipe or fitting causing any damage, leakage or resulting in contamination or wastage of water or damage to public street, as the case may be, and on payment of such charges or fee for such restoration, as he may think reasonable and justified.

135. *Appeal.*— Any person aggrieved by an order or any action made or taken under section 132 or section 133 may prefer an appeal within a period of 30 days from the date of such order or action to the prescribed authority who after hearing the parties shall pass such order as it may deem proper and the decision of the prescribed authority shall be final.

136. *Payment of water usage charges when used by joint users or licensees.*— Where the supply of water is used by joint owners, occupiers or beneficiaries of a premises or a unit, the water usage charges shall be payable by such owners, occupiers or beneficiaries, in proportion to the use of such water by each individual owner, occupier or beneficiaries to be determined by the assessing authority at the time of making assessment whose assessment in this behalf shall be final.

137. *Providing of incentives by the Government.*— If at any time the Government considers that a user or a licensee is augmenting the activities of the Government in the delivery of essential services to the general public, it may, by an order and after consulting the Authority, grant incentives to such user or licensee by way of exempting or subsidising the water usage charges payable by such user or licensee for use of the water or otherwise.

138. *Water Usage Code.*— The Authority shall specify the water usage code to provide for recovery of water usage charges, intervals for billing of charges, disconnection of supply of water for non-payment thereof, restoration of supply of water, measures for preventing tampering, distress or damage to meters, entry of authorised person for disconnecting the supply or maintaining of plant or meter and such other matters.

CHAPTER X

State Water Resources Regulatory Authority

139. *Establishment of State Water Resources Regulatory Authority.* — (1) The Government may, within three months from the date of commencement of the Act, by notification, establish an Authority to be known as the 'State Water Resources Regulatory Authority' to exercise the powers conferred on, and to discharge the functions assigned to, it under the Act :

Provided that till the Authority is established under this sub-section, the Administrative Secretary PHE, Irrigation and Flood Control may exercise the powers and discharge the functions of the Authority under the Act.

(2) The Authority established under sub-section (1) shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The Head Office of the Authority shall be at such place as the Government may, by notification, specify.

(4) The Authority shall consist of a Chairperson and not more than three Members as may be prescribed.

(5) The Chairperson and Members of the Authority shall be appointed by the Government on the recommendations of a selection committee referred to in sub-section (1) of section 141.

140. *Qualification for appointment of Chairperson and Members of the Authority.* —(1) The Chairperson shall be appointed from amongst persons who are holding or have held a post not below the rank of Principal Secretary to Government and have adequate knowledge of, or experience in, or have shown capacity in dealing with, problems relating to engineering, finance, commerce, economics, law, administration or management.

(2) The Members of the Authority shall be persons of ability, integrity and standing who have adequate knowledge of, or experience in, or have shown capacity in dealing with, problems relating to engineering, finance, commerce, economics, law or management :

Provided that at least one Member shall be from amongst the persons who are holding or have held a post not below the rank of Chief Engineer and having qualification and experience in the field of Hydraulic Engineering.

(3) The Chairperson or any Member of the Authority shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the Authority.

141. *Constitution of Selection Committee.* —(1) The Government shall, for the purposes of selecting the Chairperson and Members of the Authority, constitute a select committee consisting of—

- | | |
|---|-------------|
| (a) Chief Secretary | Chairperson |
| (b) Administrative Secretary
Incharge PHE/I&FC Department | Member |
| (c) Administrative Secretary Incharge
Planning & Dev. Department | Member |
| (d) Administrative Secretary
Incharge Finance Department | Member |
| (e) Administrative Secretary
Incharge Law Department | Member |

(2) No appointment of Chairperson or Member shall be invalid merely by reason of any vacancy in the selection committee.

(3) The Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation, or removal of the Chairperson or Member and six month before the superannuation or end of the tenure of the Chairperson or a Member make a reference to the selection committee for filing up of the vacancy.

(4) The selection committee shall finalize the selection of Chairperson or the Members, within two months from the date on which the reference is made to it.

(5) Before recommending any person for appointment as Chairperson or Member, the selection committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his function as such Chairperson or Member.

142. *Term of office and conditions of service.* —(1) The Chairperson and other Members shall hold office for a term of three years from the date they enter upon their office :

Provided that no Chairperson or Member shall hold office after he has attained the age of 65 years.

(2) The salary, allowances and other terms and conditions of service of the Chairperson and the Members shall be such as may be prescribed :

Provided that the salary, allowances and other terms and condition of service of the Chairperson and the Members shall not be varied to their disadvantage after appointment.

(3) The Chairperson and Members shall, before entering upon their office, make and subscribe to an oath of office and secrecy in such form and in such manner and before such authority as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may,—

- (a) relinquish his office by giving in writing to the Government a notice of not less than three months ; or
- (b) be removed from his office in accordance with the provisions of section 143.

(5) The Chairperson or any Member ceasing to hold office as such, shall—

- (a) not be eligible for further appointment under the Government for a period of two years from the date he ceases to hold such office ; and
- (b) not accept any commercial employment for a period of two years from the date he ceases to hold such office.

143. *Removal of Chairperson or Member.* —(1) The Chairperson and Members shall not be removed from office except in accordance with the provisions of this section.

(2) The Government may, by order, remove from office the Chairperson or any Member, if he—

- (a) has been adjudged as insolvent ; or
- (b) has been convicted of an offence which in the opinion of the Government involves moral turpitude ; or
- (c) has become physically or mentally incapable of acting as such ; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his function in the Authority ; or

- (e) has so abused his position as to render his continuance in office prejudicial to the public interest ; or
- (f) has been guilty of proved misbehaviour :

Provided that the Chairperson or a Member shall not be removed from his office on any ground specified in clauses (d),(e) and (f) unless the inquiry officer appointed by the Government for this purpose has, after an enquiry, held that the Chairperson or such Member ought on such ground or grounds to be removed.

(3) The Government may suspend the Chairperson or any Member of the Authority in respect of whom an inquiry has been ordered under sub-section (1) until the Government has passed orders on receipt of the report on such enquiry.

144. *Officers and other Employees of the Authority.* —(1) The Authority shall have a Secretary to exercise such powers and perform such duties under the control of the Chairperson, as may be prescribed.

(2) The Secretary shall be appointed by the Government.

(3) The number, nature and categories of other officers and employees required to assist the authority in discharge of its functions shall be such as may be prescribed.

(4) The salaries and allowances payable to, and other terms and conditions of the service of the Secretary, officers and other employees shall be such as may be prescribed.

(5) The Authority may appoint consultants required to assist the Authority in the discharge of its functions on the terms and conditions as may be prescribed.

145. *Functions of the Authority.* —(1) The Authority shall discharge the following functions, namely :—

- (a) determine the entitlement and distribution for various categories of use of water within each category and the terms and conditions of distribution or allocation ;
- (b) enforce the decisions and orders issued under the Act ;
- (c) fix the priority for equitable distribution of water available at the resource, project, sub-basin and river basin levels during periods of scarcity ;

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- (d) establish a water tariff system and fix the water usage charges for use of water on account of—
 - (i) drinking purposes (domestic, commercial and industrial) ;
 - (ii) irrigation of land ;
 - (iii) exploitation and use of ground water; and
 - (iv) generation of electricity :

Provided that water usage charges shall at least recover the cost of the project and the expenditure incurred on its operation, maintenance and management.

- (e) regulate use of water by the users and licensees from all water sources in the State ;
- (f) adjudicate upon the disputes between the licensees and the department ;
- (g) specify or enforce standards with respect to quality, continuity and reliability of service by the department and the licensees ;
- (h) ensure satisfactory service on the part of the concerned department or agency to the users or licensees ;
- (i) ensure transparency while exercising the powers and discharging its functions ;
- (j) advise the Government in the promotion of competition for the optimum utilization of water resources in the State ;
- (k) administer and manage inter-State water resources apportionment on river systems of the State ;
- (l) approve and review water resources schemes and projects :

Provided that before approving any scheme or project, the Authority shall ensure that the proposed scheme or project is in conformity with—

- (i) the integrated State Water Policy and plan ;

- (ii) the economic, hydrologic and environmental viability ; and
- (iii) the obligations of the State under any agreement, or decree or judgment of a court or tribunal, or inter-State water entitlement :

Provided further that while approving any new water resources scheme or project, instructions issued by the Government from time to time relating to investment priority are strictly observed ;

- (m) establish a system of enforcement, monitoring and measurement of the use of water both in quantity and type of use ;
- (n) establish a regulatory system for the water resources of the State including surface and subsurface waters, to regulate the use of water and apportion the entitlement to the use of the water between water using categories ;
- (o) promote efficient use of water and to minimize the wastage of water ; and
- (p) discharge such other function as may be prescribed or assigned to it by the Government.

(2) The Authority may review and revise the water usage charges fixed by it under clause (d) of sub-section (1) after every three years.

(3) In the event of water scarcity, the Authority, may re-fix the entitlements and adjust the quantities of water available to all users and licensees in such manner as the Authority may deem necessary to overcome such scarcity and to ensure equitable distribution of available water.

(4) The Authority shall, in accordance with the State Water Policy, co-ordinate with all concerned agencies to implement a comprehensive hydro-meteorological data system for the state.

(5) The Authority shall, promote and implement sound water conservation and management practices throughout the State.

(6) The Authority shall support and aid the enhancement and preservation of water within the State in close coordination with the other States.

(7) The Authority shall ensure that while approving the water schemes and projects, the principle of 'tail to head' irrigation is implemented.

(8) The Authority shall strive to make the water available to the drought prone areas of the State.

146. *Powers of the Authority.* —(1) The Authority shall for the purposes of making any inquiry or initiating any proceedings under the Act, have the same powers as are vested in a Civil Court, under the Code of Civil procedure, Samvat 1977, in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any witness and examining him on oath ;
- (b) discovery and production of any document or other material object capable of being produced as evidence ;
- (c) receiving of evidence on affidavits ;
- (d) requisition of any public record ;
- (e) issuing commission for examination of witnesses ;
- (f) reviewing its decisions, directions and orders ;
- (g) any other matter which may be prescribed.

(2) The Authority shall have the powers to pass such interim order in any proceeding, hearing or matter before it, as it may consider appropriate.

(3) The Authority may authorise any person, as it may deem fit, to represent the interest of the users and licensees in the proceedings before it.

147. *Proceedings before Authority.*— All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the State Ranbir Penal Code and the Authority shall be deemed to be a Civil Court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, Samvat 1989.

148. *Powers of entry and seizure.*— The Authority or any officer, not below the rank of Gazetted Officer specially authorized in this behalf by the Authority, may enter any building or place where the Authority has reason to

believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts of copies therefrom subject to the provisions of section 102 of the Code of Criminal Procedure, Samvat 1989, in so far as it may be applicable.

149. *Delegation.*— The Authority may, by general or special order in writing, delegate to the Chairman, any Member, Secretary, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under the Act, (except the powers to adjudicate disputes under clause (f) of sub-section (1) of section 145 and the powers to make regulations under section 197 as it may deem necessary.

150. *Appeal to High Court in certain cases.* —(1) Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court.

(2) An appeal under sub-section (1) shall be preferred within sixty days from the date of communication of the decision or order of the Authority to the person aggrieved by such decision or order.

CHAPTER XI

INVESTIGATION AND ENFORCEMENT

151. *Assessment.* —(1) If upon an inspection of any place or premises or any equipment, gadget, machine or device found connected or used, or any records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of water, he shall provisionally assess to the best of his judgment the water charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the water usage charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the concerned department within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of water has taken place, the assessment shall be made for the entire period during which such unauthorized use of water has taken place, and if, however, the period during which such unauthorized use of water has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the water usage charges applicable for the relevant category of services.

Explanation :—For purposes of this section—

- (a) 'assessing officer' means the Assistant Executive Engineer concerned or a person designated as such by a licensee ;
- (b) 'unauthorized use of water' means the usage of water—
 - (i) by an artificial means or from unauthorised source ; or
 - (ii) by a means not authorized by the concerned authority or licensee ; or
 - (iii) through a tampered meter ; or
 - (iv) for the purpose other than for which the usage of water was authorized ; or
 - (v) for the premises or areas other than those for which the supply of water was authorized.

152. *Appeal to appellate authority.* —(1) Any person aggrieved by the final assessment order made under section 151 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the Authority, to the Executive Engineer concerned who shall be the appellate authority.

(2) No appeal against an order of assessment under sub- section (1) shall be entertained unless an amount equal to one-half of the assessed amount has

been deposited by the person aggrieved in cash or by way of bank draft with the concerned department or the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an interest at the rate of six percent per annum compounded every six months.

153. *Investigation of certain matters.* —(1) The Authority may, on being satisfied that a user or a licensee has failed to comply with any of the conditions of authorisation, permit or license or such user or licensee has failed to comply with any of the provisions of the Act or the rules or regulation made thereunder, at any time, by order in writing, direct any person or agency (hereafter in this section referred to as 'investigating authority') specified in the order to investigate the affairs of any user or licensee and to report to the Authority on any investigation made by such investigating authority :

Provided that the investigating authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1958, the investigating authority may, at anytime, and shall, on being directed so to do by the Authority, cause an inspection to be made, by one or more of its officers, of any user or licensee and his books of account and the investigating authority shall supply to the user or licensee, as the case may be, a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officers of the user or licensee, as the case may be, to produce before the investigating authority directed to make the investigation under sub-section (1) or inspection under sub-section (2), all such books of account, registers

and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the user or licensee as the said investigating authority may require of him within such time as it may specify.

(4) Any investigating authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath any manager, managing director or other officer of the user or licensee, as the case may be, in relation to his business and may administer oath accordingly.

(5) The investigating authority shall, if it has been directed by the Authority to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section (1), or sub-section (5), the Authority may, after giving such opportunity to the user or licensee, as the case may be, to make a representation in connection with the report as in the opinion of the Authority seems reasonable, by order in writing—

- (a) require the user or the licensee to take such action in respect of any matter arising out of the report as the Authority may think fit ; or
- (b) cancel the authorisation, permit or license for use of water ; or
- (c) direct the user or licensee to stop use the water.

(7) The Authority may, after giving reasonable notice to the user or licensee, publish the report submitted by the investigating authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Authority may specify the minimum information to be maintained by the user or the licensee in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by user or licensee in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the investigating authority to discharge satisfactorily its functions under this section.

Explanation:—For purposes of this section, the expression ‘user’ and the expression ‘licensee’ shall include all its subsidiaries formed for the purpose of carrying on the business requiring usage of water or the distribution, or trading, of water.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the user or the licensee, as the case may be, and shall have priority over the debts due from the user or the licensee and shall be recoverable as an arrear of land revenue.

154. *Orders for securing compliance.* —(1) Where the Authority, on the basis of material in its possession, is satisfied that a user or a licensee is contravening, or is likely to contravene, any of the conditions mentioned in his authorisation, permit or licence or the user or licensee has contravened or is likely to contravene any of the provisions of the Act, it shall, by an order, give such directions as may be necessary for the purpose of securing compliance with that condition or provision.

(2) While giving direction under sub-section (1), the Authority shall have due regard to the extent to which any person has sustained, or is likely to sustain, loss or damage due to such contravention.

155. *Procedure for issuing directions by the Authority.*— The Authority, before issuing any direction under section 154, shall—

- (a) serve the notice in the manner as may be specified to the concerned user or the licensee ;
- (b) publish the notice in the manner as may be specified for the purpose of bringing the matter to the attention of persons affected or likely to be affected ;
- (c) consider suggestions and objections from the concerned user or the licensee and the persons affected or likely to be affected.

CHAPTER XII

OFFENCE AND PENALTIES

156. *Offence relating to irrigation or hydraulic works.* —(1) Whoever—

- (a) obstructs or encroaches upon any irrigation or hydraulic work ;
- (b) damages, alters, injures any irrigation or hydraulic work ;
- (c) interferes with, increases or decreases the level of, supply of water in or the flow of water from any irrigation or hydraulic work ;

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- (d) interferes with, or alters the flow, of water in any water source so as to endanger, damage or render less useful any irrigation or hydraulic work ;
- (e) obstructs tapping source of water ;
- (f) disposes off house sewage or other house hold waste into any water source ;
- (g) lifts water from any water source for use in a brick kiln or any other commercial use except under a proper authorisation, permit or licence granted by the competent authority ;
- (h) damages or alters the position of moga (water outlet) fixed by the Department which may adversely affect irrigation water supply in the adjoining area ;
- (i) opens, shuts, or obstructs or attempts to open, shut or obstruct, any sluice or outlet or any other similar contrivance in any irrigation or hydraulic work ;
- (j) uses water from an irrigation work without obtaining the permission required under the Act ;
- (k) contravenes the provisions of section 71 or section 72 or section 81 or any other provision of the Act or the rules made thereunder ;
- (l) destroys or removes any level mark or water gauge fixed by the department or any of its officers ;
- (m) being responsible for the maintenance of a water channel or field channel, or using a water channel or field channel, neglects to take proper precautions for the prevention of waste of water thereof, or interferes with the authorized distribution of water therefrom, or uses such water in an unauthorized manner ;
- (n) neglects, without reasonable cause, to carry out or to continue to carry out duties in connection with the execution of any repair or work, when lawfully bound to do so ;
- (o) causes any vessel to enter on any water source or any irrigation work contrary to the provisions of the Act or the rules ;

- (p) neglects to take proper precautions, while navigating on any irrigation work, for the safety of the irrigation work and of vessels thereon ;
- (q) allows cattle to graze or be gathered on the irrigation work or to pass any animal or vehicle on any irrigation work ;
- (r) grows or allow to grow any crop in contravention of a notification under section 62 ;
- (s) illegally and unauthorisedly extracts bed material from any water course or fails to remove the extracted material within the time frame allowed for such removal ;

shall be liable, on conviction—

- (i) for offences mentioned in clauses (a) to (l), to be punished with imprisonment for a term which may extend to one year, or with fine which may extend to rupees ten thousand, or with both ; and
- (ii) for offences mentioned in clauses (m) to (s) to be punished with imprisonment for a term which may extend to two months, or with fine which may extend to rupees five thousands but shall not be less than rupees two thousands, or with both.

(2) A person convicted for an offence under sub-section (1) shall, in case of a continuing offence, be liable to a further fine of rupees one thousand for each day of continuance of such offence.

(3) A person convicted for offences mentioned in clauses (a) to (l) of sub-section (1) shall in addition to imprisonment and fine be liable to repair the damage etc.

157. Liability of removing obstruction or repairing the damage. —(1) When any person is convicted for any offence mentioned in clauses (a) to (l) of sub-section (1) of section 156, the Assistant Executive Engineer concerned may, by order, direct the said person to remove the obstruction, or repair the damage, or replace or repair the land mark, level mark or water gauge, in respect of which he has been convicted within a period to be fixed in such order.

(2) If such person neglects or refuses to obey the order issued under sub-section (1) within the period so fixed, the Assistant Executive Engineer may

carry out the work in accordance with such order and the cost thereof shall be recoverable from such person as arrears of land revenue.

158. *Power to remove obstruction or damage to work.*— An Assistant Executive Engineer Incharge of any irrigation work, may take any person into custody without a warrant, and shall without unnecessary delay take him to a judicial Magistrate, or in his absence, to the nearest police station, if such person in his opinion—

- (a) wilfully damages, alters, enlarges or obstructs any irrigation work ;
- (b) without proper authority, interferes with the supply or flow of water, in or from any irrigation work so as to endanger, damage or render such irrigation work less useful ; or
- (c) obstructs tapping source of water in any water source.

159. *Offences relating to drinking water supply or dams.* —(1) Whoever dishonesty—

- (a) tapes, makes or causes to be made any connection with underground or underwater lines or service facilities of the Government or the licensee or supplier, as the case may be ;
- (b) takes or makes any illegal water connection ;
- (c) tampers a flow meter, installs or uses a tampered meter reversing connection or any other device or method which interferes with proper and accurate registration and account of water used, or which results in theft or wastage of water ;
- (d) damages or destroys a flow meter, apparatus, equipment or wire which interferes with the proper or accurate metering of water usage ;
- (e) uses water through a tampered meter ;
- (f) prevents installation of meter or refuses to install a meter in his premises or unit ;
- (g) uses water for the purpose other than for which the usage of water was authorized ;

- (h) uses water from any water source without obtaining the permission or licence for such use ;
- (i) installs pump on the main or any other distribution pipe line for drawal of water, adversely affecting supply of water to others ; or
- (j) contravenes any of the provisions of chapter II or chapter VI of the Act,

shall be liable, on conviction, to be punished with imprisonment for a term which may extend to one year, or with fine which may extend to rupees five thousand, or with both :

Provided that in the event of second and subsequent conviction, such person shall be debarred from getting water supply for any purpose other than domestic purpose from any source for a period which shall not be less than one month but may extend to six months :

Provided further that if it is proved that any artificial means or means not authorized by the Assistant Executive Engineer or the Executive Engineer or the prescribed authority or the licensee or the supplier, as the case may be, exist for the abstraction, consumption or use of water by the consumer, it shall be presumed, until the contrary is proved, that such abstraction, consumption or usage of water has been dishonestly caused by such consumer.

(2) Notwithstanding anything contained in sub-section (1), whoever dishonesty—

- (a) takes any illegal water supply from any water source for generation of electricity ;
- (b) tampers a flow meter, installs or uses a tampered meter reversing connection or any other device or method which interferes with proper and accurate registration and account of water used for generation of electricity ;
- (c) damages or destroys a flow meter, apparatus, equipment or wire which interferes with the proper or accurate metering of water usage for generation of electricity ;
- (d) uses water for generation of electricity through a tampered meter ;
- (e) uses water for generation of electricity from any water source without obtaining the licence for such use ;

- (f) contravenes any of the provisions of chapter VI of the Act,

shall be liable, on conviction, to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to rupees fifty thousand but shall not be less than rupees twenty thousand, or with both.

160. *Offences relating to theft of material.* —(1) Whoever, dishonestly:—

- (a) cuts or removes or takes away or transfers any material or meter from any installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the concerned officer of the department or the owner or the licensee, as the case may be, whether or not the act is done for profit or gain ;
- (b) stores, possesses or otherwise keeps in his premises, custody or control, any material or meter without the consent of its owner, whether or not the act is committed for profit or gain ;
- (c) loads, carries or moves from one place to another any material or meter without the consent of its owner, whether or not the act is done for profit or gain ;
- (d) obstructs or causes to obstruct personally, or in connivance with any other person, tapping of any water source,

is guilty of an offence of theft of material, and shall be liable, on conviction, to be punished with imprisonment for a term which may extend to three years but shall not be less than three months, or fine which may extend to rupees twenty thousand but shall not be less than rupees five thousand, or with both.

(2) If a person, having been convicted of an offence punishable under sub section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than rupees ten thousand which may extend to rupees thirty thousand.

161. *Punishment for receiving stolen property.*— Whoever, dishonestly, receives any stolen material knowing or having reasons to believe the same to be stolen property, shall be liable, on conviction, to the punishment of

imprisonment of either description for a term which may extend to three years, or fine which may extend to rupees ten thousand, or with both.

162. *Interference with utilities or works of licensee.* —(1) Whoever,—

- (a) unauthorized connects any utility or apparatus with any pipe line or feeder canal through which water is supplied by a licensee or disconnects the same from any such pipe line ;
- (b) unauthorizedly reconnects any utility or apparatus with any pipe line or feeder canal or other works being the property of a licensee when the said line or other works has or have been cut or disconnected ;
- (c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee ; or
- (d) maliciously injures any utility or apparatus belonging to a licensee or wilfully or fraudulently alters the parameters or apparatus or prevents any such utility or apparatus from duly registering the usage of water,

shall be liable, on conviction, to punishment with imprisonment for a term which may extend to three years, or with fine which may extend to rupees ten thousand, or with both, and, in the case of a continuing offence, with a daily fine which may extend to rupees five hundred.

(2) If it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c) of sub-section (1) or causing such alteration or prevention as is referred in clause (d) thereof, and the utility or apparatus is under the custody or control of the consumer, and, irrespective of whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, re-connection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

163. *Negligently breaking or damaging works.*— Whosoever, negligently breaks, injures, throws down or damages any material connected with the supply of water shall be liable, on conviction, to punishment of fine which may extend to five thousand rupees, besides recovery of cost of restoration thereof.

164. *Penalty for intentionally injuring works.*— Whoever maliciously causes water to be wasted or diverted or with intent to cut off the supply of water, cuts or injures, or attempts to cut or injure, any water supply line or feeder canal or works shall be liable to punishment of fine may extend to ten thousand rupees, besides recovery of cost of restoration thereof.

165. *Damage to public stand post.*— Whoever, maliciously damage a public stand post (PSP) shall be liable, on conviction, to punishment of fine which may extend to two thousand rupees, besides recovery of cost of restoration of such post.

166. *Punishment for non-compliance of other orders or directions.*— Whoever, fails to comply with any order or direction given under the Act, within such time as may be specified in the said order or direction, or contravenes or attempts or abets the contravention of any of the provisions of the Act or any rule or regulation, shall be liable, on conviction, to punishment of imprisonment for a term which may extend to three months, or fine which may extend upto rupees one lakh in case of dams and upto rupees thirty thousand in other cases in respect of each offence, or with both and in case of a continuing failure, with an additional fine which may extend to five thousand rupees for everyday during which the failure continues after conviction of the first such offence.

167. *Offences relating to ground water.*— Whoever,—

- (a) sinks a well in notified areas without a permit ;
- (b) obstructs the authority or any other employee authorized by it to exercise any of the powers under the Act ;
- (c) fails to comply with the requisition made under the provisions of the Act ;
- (d) having been required to furnish any information wilfully refuses, or without lawful excuse neglects, to furnish such information ;
- (e) wilfully furnishes or causes to be furnished any information or return which he knows to be false ; or
- (f) contravenes the provisions of section 113,

shall be liable, on conviction, to punishment of—

- (i) fine, for the first offence, which may extend to rupees ten thousand but shall not be less than rupees five thousand ;
- (ii) fine, for the second and subsequent offences, which may extend to rupees fifteen thousand but shall not be less than rupees ten thousand ; and
- (iii) in respect of continuing contravention of the provisions of the Act, a fine which may extend to rupees ten thousand for every day during which such contravention continues, or both.

168. *Offences relating to flood basin and embankments.*— Whoever,—

- (a) removes or otherwise interferes with the bed material in or from any water source ;
- (b) cuts through or attempts to cut through any public embankment or opens any sluice, watercourse, drain, through an embankment or stops any opening made by the department ;
- (c) plies vehicle on the embankments ;
- (d) constructs any work around any water source likely to change the behaviour of the flow of water ;
- (e) extracts any bed material without taking prior permission in writing from the authority competent to grant such permission with respect to quantity and the location ;
- (f) constructs any building, railing, platforms on the slopes of an embankment ;
- (g) removes or tampers the flow-meter or gauge installed for purpose of recording usage of water ; or
- (h) obstructs any officer in discharge of his duties,

shall be liable, on conviction, to punishment of fine which may extend to, rupees five thousand in case of first conviction, and to rupees ten thousand on second conviction, and in case of any subsequent conviction with imprisonment for a term which may extend to one year, or fine which may extend to rupees fifteen thousand, or with both.

169. *Offences by a companies.* —(1) If the person committing an offence under the Act is a company, the company as well as every person in charge of, and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :—For purposes of this section :—

- (a) “company” means anybody corporate and includes a firm or other association of individuals ; and
- (b) “director” in relation to a firm means a partner in the firm.

170. *Offence by Government employees.*— Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under the Act or any other law for the time being in force, if any officer or other employee of the Government or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of utility is committed, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to rupees thirty thousand, or with both.

171. *Abetment.*— Whoever abets an offence punishable under the Act shall notwithstanding anything contained in the State Ranbir Penal Code, be liable, on conviction, to the punishment provided for the offence under the Act.

172. *Cognizance of offences.*— No court shall take cognizance of any offence punishable under the Act except upon a complaint in writing made by the Government or any of its officers or the Authority, as the case may be, for this purpose :

Provided that the court may also take cognizance of an offence punishable under the Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, Samvat 1989.

173. *Punishment under other laws not barred.*— Nothing contained in the Act shall prevent the prosecution of any person under any other law for the time being in force in the State for any act or omission punishable under such other law.

174. *Penalty for non-compliance of directions of the Authority.*— If any complaint is filed before the Authority that any person has contravened any provisions of the Act, or if the Authority is satisfied that any person has contravened any of the provisions of the Act or the rules or regulations or any direction issued by the Authority has not been complied with, the Authority may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under the Act, such person shall pay, by way of penalty, such amount which shall not exceed one lakh rupees for each contravention in case of dams and which shall not exceed rupees twenty thousand in other cases, and in case of a continuing failure to pay such penalty, with an additional penalty which may extend to five thousand rupees for everyday from the day such failure commences until he pays such penalty :

Provided that no penalty shall be imposed under this sub-section without affording such person a reasonable opportunity of being heard.

175. *Power to adjudicate.* —(1) For the purpose of adjudicating under the Act, the Authority shall appoint any of its members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding any inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which, in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with any provision of the Act, he may impose such penalty as he thinks fit in accordance with the provisions of the Act.

(3) Any person aggrieved by an order under sub-section (2) may, within thirty days of the order, prefer an appeal before the Authority for modifying or rescinding such order :

Provided that the Authority shall not pass any order without affording reasonable opportunity to the other party or parties, as the case may be.

176. *Factors to be taken into account by adjudicating officer.*— While adjudicating the quantum of penalty under section 175, the adjudicating officer shall have due regard to the following factors, namely :—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default ;
- (b) the repetitive nature of the default.

177. *Civil Court not to have jurisdiction.*— No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in sub-section (3) of section 151 or an appellate authority referred to in sub-section (4) of section 152 or the adjudicating officer appointed under the Act is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

178. *Penalties not to effect other liabilities.*— The penalties imposed under the Act shall be in addition to, and not in derogation of, any liability in respect of payment of compensation or, in the case of a licensee, the revocation of his licence which the offender may have incurred.

179. *Power of police to investigation.*— For the purpose of investigation of an offence punishable under the Act, a police officer shall have all the powers as provided in chapter XIV of the Code of Criminal Procedure, Samvat 1989.

180. *Certain offences cognizable.*— Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, an offence punishable under sections 156 and sections 159 to 171 shall be cognizable.

181. *Compounding of offences.* —(1) Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, the Government or any officer authorized by it in this behalf may accept from any consumer or licensee or the person who committed any offence punishable under the Act, a sum of money by way of compounding of the offence as specified in the Table below :—

TABLE

Offence	Rate at which the sum of money for compounding to be collected
1	2
1. Offences punishable under clauses (a) to (l) of sub-section (1) of section 156.	Rupees ten thousand.
2. Offences punishable under clauses (a) to (m) of sub-section (s) of section 156.	Rupees five thousand.
3. Offences punishable under sub-section (1) of section 159.	Rupees five thousand.
4. Offences punishable under sub-section (2) of section 159 or section 166 or section 174.	Rupees fifty thousand.
5. Offence punishable under sections 160 to 162.	Rupees five thousand plus the cost of material stolen, injured or damaged.
6. Offence punishable under sections 163 to 165 or section 167 or section 168.	Rupees ten thousand :

Provided that the Government may, by notification, amend, vary or modify the rates specified in the table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or licensee or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Government or an officer empowered in this behalf by it shall be deemed to amount to an acquittal within the meaning of section 403 of the Code of Criminal Procedure, Samvat 1989.

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any consumer, licensee or any other person.

CHAPTER XIII

Special Courts

182. *Constitution of Special Courts.*—(1) The Government in consultation with the High Court may, for the purposes of providing speedy trial of offences referred to in section 156 and sections 159 to 171, by notification constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) Where the office of the judge of a Special Court is vacant, or such judge is absent from the ordinary place of sitting of such Special Court, or where no Special Court has been constituted under the Act, the functions of the Special Court shall be disposed off by the Chief Judicial Magistrate having jurisdiction in the area.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, every offence punishable under section 156 and sections 159 to 171 shall be triable by the Special Court or the Chief Judicial magistrate, as the case may be, within whose jurisdiction such offence has been committed.

183. *Review.*— The Special Court may, on the petition or otherwise and in order to prevent miscarriage of justice, review its judgement or order but no such review petition shall be entertained except on the ground that it had passed such order under a mistake of fact, ignorance of any material fact or any error apparent on the fact of the record :

Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

Explanation:—For purpose of this part, “Special Court” means the Special Court constituted under sub-section (1) of section 182 and includes the Court having jurisdiction under sub-section (2) thereof.

CHAPTER XIV

Grants, Funds, Accounts, Audit and Report

184. *Grants and loans by the Government.*— The Government may, after due appropriation made by State Legislature in this behalf, make to the Authority grants and loans of such sums of money as the Government may consider necessary.

185. *Establishment of fund by Government.* —(1) There shall be constituted a fund to be called the State Water Resources Regulatory Authority fund and there shall be credited thereto,—

- (a) any grants and loans made to the Authority by the Government under section 184 ;
- (b) all fees received by the Authority under the Act ;
- (c) all sums received by the Authority from such other sources as may be decided upon by the Government.

(2) The fund shall be applied for meeting,—

- (a) the salary, allowances and other remuneration of Chairperson, Members, officers and other employees of the Authority ;
- (b) the expenses of the Authority in discharge of its function under the Act ;
- (c) the expenses on objects and for purposes authorized by the Act.

(3) The Government may, in consultation with the controller and Auditor General of India, prescribe the manner of applying the fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

¹[185-A. *Constitution of Fund for utilization of Water Usage Charges.*—

(1) The Finance Department will constitute a ‘fund’ under a proper Account No. in the Jammu and Kashmir Bank or allot an ‘Account Head’ in which amount realized as water usage charges under the Act from such users who are generating power from Hydroelectric Projects in the State shall be deposited.

²[(2) The fund, so created, shall be operated upon by the Administrative Secretary, Finance Department, for the purpose of being utilized for establishment of Hydel Projects, Hydroelectric Projects, Multipurpose Hydroelectric Projects, buying back Hydroelectric Power Projects already established in the State, capital investment in electric transmission and distribution network within the territory of the State and the purchase of power by the State Government or its entities, with the prior approval of the Government.]

1. Section 185-A inserted by Act XVII of 2012, s. 2, w.e.f. 14-08-2012.

2. Sub-section (2) substituted by Act XVIII of 2014, s. 2, w.e.f. 31-07-2014.

186. *Accounts and Audit of Authority.* —(1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Government in consultation with the Controller and Auditor General of India.

(2) The accounts of the Authority shall be audited by the Controller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Controller and Auditor General of India.

(3) The Controller and Auditor General of India and any person appointed by him in connection with the audit of the accounts of the Authority under the Act, shall have the same rights and privileges and authority in connection with such audit as the controller and Auditor General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Controller and Auditor General of India or any other person appointed by him in his behalf together with the audit report thereon, shall be forwarded annually to the Government and the Government shall cause the same to be laid, as soon as may be after it is received, before the State Legislature.

187. *Annual report of the Authority.* —(1) The Authority shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

188. *Budget of the Authority.*— The Authority shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimate receipts and expenditure of the Authority and forward the same to the Government.

189. *Direction by Government.* —(1) In the discharge of its functions, the Authority shall be guided by such direction in matters of policy involving public interest as the Government may from time to time give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Government thereon shall be final.

CHAPTER XV

Miscellaneous

190. *Protection of action taken in good faith.*— No suit, prosecution or other proceeding shall lie against the Government or the Authority or any officer of the Government, or any Member, officer or other employee of the Authority or any public servant for anything done or in good faith purporting to be done under the Act or the rules or regulations.

191. *Members, officers, etc of the Authority to be public servants.*— The Chairperson, Members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the Act, to be public servants within the meaning of section 21 of the State Ranbir Penal Code.

192. *Recovery of water usage charges/penalty payable under the Act.*— Any outstanding amount on account of water usage charges or any penalty payable by a person under the Act, if not paid, may be recovered as if it were in arrears of land revenue.

193. *Services of notices, orders or documents.*—(1) Every notice, order or document by or under the Act, required, or authorized to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefor or by registered post or such means of delivery as may be prescribed—

- (a) where the Government is the addressee, at the office of such officer as the Government may prescribe in this behalf ;
- (b) where the Authority is the addressee, at the office of the Authority ;
- (c) where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India ;
- (d) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under the Act required or authorized to be addressed to the owner or occupier or licensee of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier or licensee of the premises (naming the premises), and

may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

194. *Inconsistency in laws.*— Nothing contained in the Act or any rule or regulation made thereunder or any instrument having effect by virtue of the Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Jammu and Kashmir Consumer Protection Act, 1987.

195. *Act to have overriding effect.*— Save as otherwise provided in section 194, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act.

196. *Provisions of the Act to be in addition to and not in derogation of other laws.*— The provisions of the Act are in addition to and not in derogation of any other law for the time being in force.

197. *Powers of Government to make rules.* —(1) The Government may, by notification, make rules for carrying out the provisions of the Act.

(2) In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the conditions subject to which drinking water may be supplied for any purpose other than domestic use and the manner in which the deed is to be executed by the applicant under sub-section (1) of section 7 ;
- (b) the form and manner of application and the amount of fee to be paid by the applicant for supply of water under sub-section (1) of section 8 ;
- (c) the terms and conditions on which water supply is restored under sub-section (2) of section 22 ;
- (d) the form of notice to be served on an owner, occupier or beneficiary under sub-section (1) of section 48 ;
- (e) the minimum area for land for which a small irrigation scheme should be prepared under sub-section (1) of section 63 ;

- (f) the terms and conditions on which, and the fee to be paid for playing vessels or boats in a reservoir, pond etc. under section 70 ;
- (g) the terms and conditions on which land is restored to the owner or occupier under sub-section (7) of section 81 ;
- (h) the form and manner in which the agreement is to be executed under clause (b) of section 93 ;
- (i) the form and manner of application and the fee to be paid for grant of licence under section 97 ;
- (j) the fee to be paid by a licensee for obtaining permission for special works under sub-section (2) of section 109 ;
- (k) the procedure for de-notifying an area under sub-section (3) of section 111 ;
- (l) the form and manner in which a Certificate of Registration is granted under sub-section (1) of section 114 ;
- (m) the fee to be paid for filing appeals under sub-section (1) of section 123 ;
- (n) the salary, allowances and other terms and conditions of service of the Chairperson and Members of the Authority 142 ;
- (o) the form and manner in which and the authority before whom the Chairperson and Members shall make and subscribe oath under sub-section (3) of section 142 ;
- (p) the powers to be exercised and duties to be performed by the Secretary of the Authority under sub-section (1) of section 144 ;
- (q) the number, nature and categories of officers and employees of the Authority under sub-section (2) of section 144 ;
- (r) the salaries, allowances and other terms and conditions of Secretary, officers and other employees of the Authority under sub-section (4) of section 144 ;
- (s) the manner of applying the State Water Resources Regulatory Authority Fund under sub-section (3) of section 185 ; and

- (t) any other matter which is required to be, or may be, prescribed.

198. *Power of the Authority to make regulations.* —(1) The Authority may, by notification, make regulations consistent with the Act and rules generally to carry out the provisions of the Act.

(2) In particular and without prejudice to the generality of the powers contained in sub-section (1), such regulations may provide for all or any of the following matters, namely :—

- (a) the form and manner of publishing a scheme under sub-section (1) of section 33 ;
- (b) the form and manner of publishing a scheme under sub-section (3) of section 51 ;
- (c) the form and manner of publishing a scheme under sub-section (7) of section 51 ;
- (d) the distance from the boundaries of an irrigation work in which use of explosives is prohibited under section 69 ;
- (e) the fee and service charges to be paid by the user for installation of a unit under sub-section (1) of section 91 ;
- (f) the minimum and maximum ceiling of water to be allocated to a user under section 95 ;
- (g) the safety measures to be adopted by a licensee for protecting public and ensuring safety under sub-section (1) of section 105 ;
- (h) the manner in which copy of notification shall be affixed under clause (b) of sub-section (2) of section 111 ;
- (i) the form and manner in which application shall be made and the particulars accompanying such application under sub-section (2) of section 112 ;
- (j) the terms and conditions on which consultants may be appointed under sub-section (5) of section 144 ;
- (k) the form in which an appeal may be filed, the manner of its verification and the fee to be paid for filing such appeal under sub-section (1) of section 152 ; and

(1) any other matter which is to be, or may be, specified.

(3) All regulations made by the Authority under the Act shall be subject to the condition of previous publication.

199. *Rules and regulations to be laid before the State Legislature.*— Every rule made by the Government and every regulation made by the Authority shall be laid, as soon as may be after it is made, before each House of the State Legislature.

200. *Power to remove difficulties.* —(1) If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in the Government Gazette, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty :

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of the Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature.

201. *Repeal and Saving.* —(1) Save as otherwise provided in the Act, the Water Mills (Jandar and Gharat) Act, Samvat 1989, the Kashmir Valley Embankment Act, Samvat 1992, the Jammu and Kashmir Water Supply Act, 1963 and the Jammu and Kashmir Irrigation Act, 1978 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of the Act, be deemed to have been done, taken, issued or granted under the corresponding provisions of the Act :

Provided that the rules or regulations made under the repealed laws shall, in so far as the same are not inconsistent with the provisions of the Act, be deemed to have been made under the Act, and shall remain in force until repealed or modified expressly or by implications by the Government or the Authority, as the case may be.
