

**Comparative Legal and  
Regulatory Framework of Nepal  
and India relating to Hydropower  
Development**

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# HP Legal Development in Nepal

- To have better water resource management, Water Resource Act of Nepal has been introduced in 1992 with provisions about priority in water use, and GoN's authority to contract for water utilisation, development and service extension
- First Hydropower Policy, was enacted in 1992 which was a good step to boost investment in hydropower development
- Electricity Act, 1992 and Electricity Regulation, 1993 were introduced to effectuate the policy of 1992
- Having a necessity of improved legal framework Hydropower Policy of 2001 was enacted
- Now to effectuate the policy of 2001, different acts are needed which are on its way

# HP Legal Development in India

- Subsequently India became independent, Electricity (Supply) Act was enacted in 1948 though Indian Electricity Act, 1910 was already there
- In early independent phase, few projects were successfully constructed under the domain of Government which was succeeded due to the serious effort of the then governments.
- Seeing the success of the projects constructed under the government domain, the government of India decided to develop more projects under its domain with a greater pace
- State Electricity Board were therefore considered significant
- However, SEBs were not that successful as it was anticipated though it might have considered good in some states

# HP Legal Development in India

- Due to power deficit, large corporate houses started building captive plant to protect their other industries
- With this success, the level of confidence of the private sector went up to invest in Hydel project and there has been a demand of effective legal and regulatory framework
- Reform of SEB were considered as a requirement to enhance the private participation in electricity development
- As a new move, Regulatory Commission Act was enacted in 1998 to regulate the electricity sector
- By reaching the year 2003, GoI decided to introduce effective consolidated electricity act by repealing few major acts

# Key Legal Documents

- Key Rules in Nepal
  - Water Resources Act, 1992
    - Priority in Use of Water
  - Electricity Act, 1992, and Electricity Regulation, 1993
    - Provisions about license and licensing authorities
  - Hydropower Policy of 2001
    - An improved policy with additional thought
  - Income tax act to levy income tax. Income tax is less to hydropower development companies in compare to other companies

# Key Legal Documents

- Rules in India
  - Indian Electricity Act, 2003
  - Hydropower Policy/Act of State Governments which governs the project development activities
  - Direction for approval of Hydro Electric Projects formed by the SERC in case of sale of electricity within States
  - State Commission's (Conduct of Business) Regulation concerning issuance of licenses
  - Conduct of Business (Terms & Conditions of Tariff) Regulations formulated by CERC – Guidelines to SERC
  - Income tax act to provide income tax holiday

# Fundamental Organization related to Hydropower Development

- Fundamental Organization in Nepal
  - Department of Electricity Development , Ministry of Water Resource, Nepal Electricity Authority
- In India
  - Central Electricity Authority
  - Central Electricity Regulatory Commission
  - State Government, Department of Power or Energy
  - State Electricity Board for Local Purchase
  - State Electricity Regulatory Commission
  - Utilities – In case of unbundled SEB

# Features of Electricity Act of Nepal

- No license up 1 MW (Will be upgrade to 3 MW)
- Different licenses for different business
- Two types of license “Survey and Construction/Operation”
- Maximum 5 years of survey license
- Maximum 30 years of construction/operation license
- Different types of royalties as per the act and policy
- Provision about revenue exemption: custom duty facility in import of equipment and machine if not produced in Nepal
- Provision of income tax holiday , however, not applicable as has been quashed by income tax act.



# Features of Electricity Act of India

- Restructuring requirement of State Electricity Board
- Generation (De - Licensing) - Different Route
- Transmission License (maximum 25 year) by SERC
- Distribution License (maximum 25 years) by SERC
- Emphasis on Trading / Market Development
- Priority on Consumer Protection AND Tariff Principles
- Provision of Regulatory Commission and Appellate Tribunal
- Central Electricity Authority (CEA) - clearance is necessary for Techno Economic Clearance (TEC) for higher investment
- Measures against Theft of electricity

# HPD in Himachal Pradesh

- Power Generation Capacity is 20,386 MW which is about 25% of total Hydel potentiality of India
- Total of 6150 MW stand harnessed so far
- Project up to 2 MW are exclusively reserved for the bonafied Himachalis and cooperative formed by Himachalis.
- While allotting projects up to 5 MW preference will be given to the Himachalies.
- HPSEB shall buy power from small Hydro project for which buying/selling rate are fixed

# Himachal Pradesh

- Different Routes to carry out Project Development
  - HIMURJA, MOU and ICB Route
- HIMURJA Route is for less than 5 MW. HIMURJA is responsible for advertising and monitoring of projects
- Memorandum and Understanding Route under which MoU will be signed to allow the developer for preparation of detail project report - From 5 MW to 100MW project
- ICB Route where all types of premium are under competitive basis – More than 100 MW
- No effective one window – Different approvals are needed from different agencies while implementing the projects

# Himachal Pradesh

- Upfront premium from potential developers above 2MW projects however payment is under different installments
- Processing fees are necessary while applying
- Premium and fees can not be part of the project cost
- Security Deposit are also needed subsequent to the allotment of the project
- After signing of MoU or Pre-Implementation Agreement and Implementation agreement, different milestones have to be achieved from time to time by the developer
- If milestones are not achieved consequential action as prescribed will be taken by the Government

# Role of Commission in HP

- Forming directions for the approval of hydro electric project by the state if power is to be sold to the SEB
- HPERC is responsible to grant the License:
  - “Any person intending to engage in the business of transmission, distribution or trading in electricity in the State of Himachal Pradesh, shall apply to the Commission for the grant of appropriate license in the form and manner directed by the Commission and accompanied by such fees as may be prescribed for this purpose”
- Annual fees are applicable for licenses

# Impression

- Legal and Regulatory Framework of India seems to have less ambiguity than of Nepal as having long development history
- Today in India it seems that they have rules to cover all possible aspects relating to the electricity development, therefore looks complex for Hydropower than in Nepal
- Nepalese legal framework are also needed in elaborative form, because short versions always create a room for ambiguity
- Nepal also need a Electricity Regulatory commission. In India there are two types of regulatory commissions.
- Also Nepal can have project development approval as a part of government authority, however, other licensing activities can be under the authority of the commission after it is formed

**Thank you for your attention !**