CHAPTER XVII
INTER-STATE RIVER WATER DISPUTES

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1. *THE PROBLEM*

17.1.01 In India there are many inter-State rivers. The regulation and development of the waters of these rivers and river valleys continues to be a source of inter-State friction. Article 262(1) of the Constitution lays down that “Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river, or river valley”. Parliament has enacted the Inter-State River Water Disputes Act, 1956. It provides for reference of such a dispute to Tribunals on receipt of an application from a State, when the Union Government is satisfied that the dispute “cannot be settled by negotiations”. This dependence of the right of the States to have a dispute referred to a Tribunal, if the Union Government is satisfied that the matter “cannot be settled by negotiations” has been adversely commented upon. Most of the disputes refer to sharing of waters of inter-State rivers. Disputes also arise in regard to the interpretation of the terms of an agreement or the implementation of the same.

The main points of criticism against the existing arrangements are: (a) They involve inordinate delay in securing settlement of such disputes, (b) There is no provision for an adequate machinery to enforce the award of the Tribunal.

2. *CONSTITUTIONAL PROVISIONS*

17.2.01 In the Constitution, “Water, that is to say, water supplies, irrigation, and canals, drainage and embankments, water storage and water power” is a matter comprised in Entry 17 of List II. This Entry is subject to the provisions of Entry 56 of List I. In the words of an eminent jurist, the reasons for including regulation and development of inter-State river and river valleys in Entry 56 of List I are: “In respect of the waters of an inter-State river, no State can effectively legislate for the beneficial use of such waters, first, because its legislative power does not extend beyond the territories of the State: secondly, because the quantum of water available to each of the States is dependent upon the equitable share of the other States, and thirdly, a dispute about the waters of an inter-State river can arise from any actual or proposed legislation of a State"[1]. It is for these reasons that the States cannot legislate on use of waters of Inter-State rivers and river valleys beyond their State boundaries. Moreover, efficient use of such waters depends on their equitable apportionment involving more than one State, which in itself can be a subject-matter of dispute and hence its regulation and control cannot be provided for in any State legislation. For the same reason, the determination of disputes relating to such river waters is provided for in Article 262.

17.2.02 It is noteworthy that unlike Entry 56, List I, the expression 'water' in Entry 17, List II, is not qualified by the prefix 'inter-State'. Normally, therefore, the State Legislatures have full powers to legislate on all matters mentioned in Entry 17. List II, including their regulation and development even if the source of the water is an inter-State river or river valley within the territory of a State. However, Parliament may, by making the requisite declaration in public interest in terms of Entry 56 of List I, enact a law for the regulation and development of such inter-State rivers, and river valleys under the control of the Union. The Parliamentary law would, to the extent of its operation, have the effect of ousting the power of the State Legislature under Entry 17 of List II.[2]

17.2.03 The Constitution contains specific provisions regarding resolution of water disputes. Under Article 262(1), “Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley”. Under Article 262(2), “Notwithstanding anything in the Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)”.

17.2.04 It is noteworthy that the Constitution does not itself provide for a machinery for adjudication of water disputes. It leaves it to Parliament, by law, to make such provisions as it thinks fit, for adjudication of such disputes and complaints. The Constitution further empowers Parliament to decide and provide by law whether the jurisdiction of courts is to be barred. In contrast, the Government of India Act, 1935, itself provided that if a Province (or a State) felt that it was likely to be adversely affected due to distribution or control of water from any natural source, it could complain to the Governor General (Section 130). Except for complaints of trivial nature, the Governor-General was required to refer any such complaints to a

Commission for investigation and report (Section 131). He had no option in the matter unless he considered that the nature of the complaint was not serious enough. Moreover, the 1935 Act itself barred the jurisdiction of Courts in regard to such disputes (Section 134).

There is also no Entry in the Federal List of the 1935 Act corresponding to Entry 56 of List I of the Constitution. Section 19, of the Government of India Act, 1935 provided: "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power". It was, however, recognised that use of inter-State river waters could ead to disputes. Provisions of Sections 130 and 131 under the 1935 Act were, therefore, made for adjudication of such disputes.

3. *EXISTING ARRANGEMENTS*

17.3.01 Parliament has enacted the River Boards Act, 1956, under Entry 56 of List I, to promote integrated and optimum development of the waters of inter-State rivers and river valleys. This Act contemplated the appointment of River Boards by the Central Government in consultation with the State Governments for advising on integrated development of waters of inter-State rivers and river valleys. It was expected that these Boards would help in co-ordinated and optimum utilisation of the river waters and promote developemnt of irrigation, drainage, water supply, flood-control and hydroelectric power. However, the provisions of this Act have not been put to use all these years and the Act has remained a dead letter.

17.3.02 Parliament has enacted the Inter-State River Water Disputes Act, 1956, for settlement of disputes. Section 2(c) of the Act defines 'water dispute' as "any dispute or difference between two or more State Governments with respect to—

(i) the use, distribution or control of the water of, or in, any inter-State river or river valley; or

(ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or

(iii) the levy of any water rate in contravention of the prohibition contained in Section 7."

17.3.03 Section 3 of the Act reads: "If it appears to the government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or any of the inhabitants thereof, in the waters of an inter-State river or river valley have been, or are likely to be, affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed, by the other State; or

(b) the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters; or

(c) the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters;

the State Government may in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication".

The Rules framed under the Act provide, *inter alia,* that a State Government, while sending an application under Section 3 of the Act, should inform the Union Government, of "the efforts, if any, made by the parties themselves to settle the dispute".

17.3.04 Section 4(1) of the Act provides that on receipt of an application under Section 3 from any State Government, the Central Government shall, by notification in the Official Gazette, constitute a water Disputes Tribunal for the adjudication of the water dispute if it "is of opinion that the water dispute cannot be settled by negotiations".

4. *EXAMINATION OF ISSUES*

17.4.01 Most State Governments have not criticised the structure of Entry 56 of List I. Only one State Government has suggested that water should be a Union subject. Another State Government has suggested the Union Government should have a greater role in regulation and development of inter-State rivers and

river valleys, including powers of diversion (through Parliamentary legislation, if necessary) of inter-State river waters to any part of India and apportion it amongst the States. On the other hand, a State Government has argued that Entry 56 confers a vast and unfettered power on the Union, which, in conjunction with its large resources, enables it to encroach upon an area which is within the jurisdiction of the States. According to it, this Entry needs to be removed from List I and the expression "subject to the provisions of Entry 56 of List I" in Entry 17 of List II also correspondingly deleted. There has been no criticism of the structure of Article 262. Only in regard to the provisions of the Inte-State River Water Disputes Act, 1956, the State Governments have drawn attention to some deficiencies. It has been pointed out that in terms of the present enactment a reference to a Tribunal need be made only when the Union Government is satisified that no settlement by negotiations is possible. It has been alleged that this has resulted in avoidable delays. Another major lacuna is that there is no machinery for implementing an award given by a Tribunal.

17.4.02 We may first examine the suggestions regarding Entry 56 of List I. We have already noted that in the Constitution, matters of national concern have been placed in the Union List and those of purely local concern in the State List. The scheme of the Constitution envisages that certain subjects of legislation which in the first instance belong exclusively to the States, become the subject of exclusive Parliamentary legislation if a declaration is made as provided in the relevant Entries. Entry 56 of List I is one such case. The legislative power of the State with respect to Entry 17 of List II is subject to Entry 56 of List I. Clearly, the framers of the Constitution recognised the need for Union control over waters of inter-State rivers and river valleys for regulation and development. The Constitution did not place regulation and development of waters of inter-State rivers and river valleys in List I, but only provided that Parliament may declare by law that control of waters of inter-State rivers on river valleys is expedient in public interest for such regulation and development. This arrangement is in consonance with the principle underlying the Constitutional scheme of distribution of powers. According to this scheme, matters of local concern, e.g., 'land', are assigned to the States. States have exclusive powers in respect of waters which are not part of inter-State rivers and are located within the territory of a State. But waters of inter-State rivers are not *located* in any one State. They only *flow* through their territories. No State, therefore, can lay claim to the exclusive use of such river-waters and deprive other States of their just share.[3] Since the jurisdiction of a State by virtue of Article 245 is territorially limited, only Parliament can effecitvely regulate, by law the beneficial use and distribution of such waters among the States. That is why, by virtue of Entry 56, List I, Parliament has been enabled, by making the requisite declaration of public interest, to take over the field of Entry 17 of List II to the extent covered by such declaration and law. Management of water resources for the benefit of people of a State is a matter of vital concern to that State. The present situation is more a case of non-use of a given power by the Union than one of want of the same. We are, therefore, of the view that the existing arrangements which allow the States competence in regard to matters in entry 17, List II—subject, however, to Union's intervention when found necessary in public interest only in inter-State river and river valleys—is the best possible method of distributing power between the Union and the States with respect to this highly sensitive and difficult subject. We are, therefore, unable to support the suggestion that 'Water' should be made a 'Union subject'.

17.4.03 It may be noted, firstly, that Entry 56 of the Union List does not give Parliament untrammeled power to legislate even with respect to the regulation and development of the waters of inter-State rivers and river valleys. Before Parliament acquires jurisdiction to legislate with respect to this matter it must comply with a condition precedent. This condition is that Parliament must declare by law the extent to which regulation and development of the inter-State river and river valley under the control of the Union, is in the public interest. Secondly, the amplitude of Entry 56, List I is limited to the development and regulation of inter-State rivers and river valleys, while Entry 17, List II comprehends within its scope even those waters whose sources are other than inter-State rivers and river valleys. The position is that even by making the requisite declaration under Entry 56, List I, Parliament is not competent to legislate with respect to the regulation and development of waters within a State, other than those from inter-State rivers and river valleys. Therefore, it is not correct to say that Entry 56, List I gives "a vast and unfettered power" to the Union which enables it to "encroach upon" the entire field of Entry 17, List II. Regulation of optimum utilization and distribution of waters of inter-State rivers and river valleys between two or more States is a continuous process which throws up recurrent day-to-day problems having inter-State dimensions. None of the benficiary States by itself can regulate effectively the inter-State distribution of such waters and cope

with the recurring problems which partly or wholly occur outside its territory, by the exercise of its legislative or executive power for the simple reason that its writ cannot run beyond its territorial limits. These problems if not obviated or resolved in time, may cause bitterness and tension in inter-State relations. In these changing circumstances, regulation and development of such inter-State river waters under the control of the Union may become expedient in the public interest. The determination of such expediency has been left by the Constitution to the sole judgement of the elected representatives of the Nation in Parliament. This is the rationale of Entry 56, List I which enables the Union to take initiative in this respect in the public interest (which includes national interest) on the authority of a law passed in accordance therewith. In paragraphs 17.2.01 and 17.4,02 we have discussed at length the basic principles underlying this Entry. For all the reasons aforesaid we are unable to support the suggestion that Entry 56, List I should be deleted.

17.4.04 The next issue relates to the manner in which the Inter-State River Water Disputes Act has been administered. The main thrust of the complaint is the inordinate delay that occurs at every stage and the inability of the States to have a dispute referred to a Tribunal unless the Union Government is satisfied that no negotiated settlement is possible. Delay occurs at three stages:

(a) In setting up Tribunal;

(b) after announcement of award; and

(c) in implementation of the award.

Inter-State Tribunals

17.4.05 So far, the Union Government has set up the following three Tribunals under the Act:

(i) The Narmada Tribunal;

(ii) The Krishna Tribunal; and

(iii) The Godavari Tribunal.

It will be useful to recount briefly the circumstances leading to the constitution of each of these Tribunals and the time frame connected with them.

17.4.06 (i) The Narmada Tribunal was constituted on 6th October 1969 after a complaint by Gujarat under Section 3 of the Act in July 1968. On 16th October, 1969 the Government of India made another reference under Section 5(1) of the Act with respect to certain issues raised by Rajasthan. The concerned States were Gujarat, Maharashtra, Madhy Pradesh and Rajasthan. The Tribunal gave its Award in August, 1978 which was published in the Official Gazette in December, 1979.

Attempts to settle the dispute which dated back to November 1963, were made at the instance of the then Union Minister of Irrigation and Power. An agreement (Bhopal Agreement) was arrived at between Madhya Pradesh and Gujarat. Madhya Pradesh, however, subsequently did not ratify the agreement. In order to overcome the bottle-neck following Madhya Pradesh's rejection of Bhopal agreement, the Narmada Water Resources Development Committee (Khosla Committee) was set up in September, 1964. It gave its report in September, 1965. In the meantime, Madhya Pradesh and Maharashtra entered into the 'Jalsindhi Agreement', contemplating the joint construction of the Jalsindhi Dam. Khosla Committee Report was not acceptable to Madhya Pradesh and Maharashtra. On the other hand, Gujarat objected, *inter alia,* to the Jalsindhi agreement. Another set of meetings was arranged between the Chief Ministers of Madhya Pradesh, Rajasthan, Maharashtra and Gujarat in 1966 and 1967. The Tribunal was finally constituted after six years of fruitless efforts for an amicable settlement. In July 1972, the four States (Madhya Pradesh, Rajasthan, Gujarat and Maharashtra) prayed for adjournement of proceedings of the Tribunals, as the Chief Ministers of those States had entered into an agreement to settle the dispute with the mediation of the Prime Minister of India. The States arrived at a limited agreement in July, 1974 in respect of fourteen of the issues and requested the Tribunal to decide the remaining issues in the light of the agreement. After hearing the parties, the Tribunal gave its award in August, 1978 based on that agreement.[4]

(ii) In the Krishna case, the parties to the dispute were Karnataka, Maharashtra, Andhra Pradesh, Madhya Pradesh & Orissa. Mysore filed an application under Section 3 of the Act in January 1962. Maharashtra filed an application under Section 3 in July, 1963. Andhra Pradesh lodged complaints under Section 3 in April, 1968. Fresh applications were filed by Mysore and Maharashtra in 1968. Andhra

Pradesh also applied for the constitution of a Tribunal in 1969. The Tribunal was constituted on April, 1969. The Tribunals' Award was given December 1973 and was published in the Gazette in May, 1976.

The facts leading to the constitution of the Tribunal, in brief, were that in July 1951, an inter-State conference was held at New Delhi. A memorandum of agreement, valid for 25 years, was signed by the four riparian States. However, Mysore refused to ratify the agreement. The 1951 agreement, therefore, ceased to be effective. Thereafter, there were extensive territorial changes, first under the Andhra State Act, 1953, and then under the States Reorganisation Act, 1956. Between 1951 and 1960 several important projects were taken up (e.g., Nagarjunasagar, Tungabhadra High Level Canals, etc.) More schemes were being prepared in excess of the supplies of Krishna. 'As the pressure on available supplies increased, disputes on sharing of river waters became more bitter'. Madhya Pradesh and Orissa were made parties as they were interested in diversion of Godavari waters to krishna.[5]

(iii) The background of the Godavari dispute was more or less the same as that of the Krishana dispute. The parties to the dispute were Karnataka, Maharashtra, Andhra Pradesh, Madhya Pradesh and Orissa. The facts leading to the dispute, in brief, are as follows:

In July 1951, the Planning Commission held a conferrence with the Governments of Bombay, Madras, Hyderabad, Madhya Pradesh and Mysore to discuss the utilisation of supplies in the Krishna and Godavari river basins. The State of Orissa which was a coriparian State in case of Godavari, was not invited to the Conference. A memorandum of agreement, valid for 25 years, was drawn up allocating the flows of Godavari river basin. Orissa was not a party to the agreement. Subsequently, there were significant territorial changes in the States covered by the Godavari Basin, first due to the Andhra State Act, 1953 and then the States Reorganisation Act of 1956. States of Bombay, Madhya Pradesh and Andhra Pradesh became the new riparian States. Orissa continued to be a corparian State as before. A scheme for reallocation of Godavari waters was drawn up by the Central Water and Power Commission, in view of the territorial changes. But this was not acceptable to the states. No settlement could be reached at the inter-State conference held in September, 1960. In January, 1962, Mysore applied under Section 3 of the Act to refer the dispute to a Tribunal. In March 1963,the Union Minister for Irrigation and Power made a statement before Lok Sabha that the 1951 agreement was legally, wholly ineffective and unenforceable. The Union Government made several attempts to settle the dispute through negotiations. However, the efforts were not successful and fresh applications for reference of the dispute to a Tribunal under the Act were made by Maharashtra, Mysore, Orissa and Madhya Pradesh in 1968. The Award of the Tribunal was submitted in November, 1979 and published in the Gazette in July, 1980.[6]

17.4.07 The dates of application under Section 3 of the Act and the dates of setting up of tribunals do not necessarily indicate the actual time-span of disputes. In two cases the disputes have been lingering since 1956 (Krishna and Godavari), and in one case, the dispute had been continuing for six years before constitution of the Tribunal in 1969 (Narmada).

17.4.08 It is seen clearly from the above that in the three cases where Tribunals were set up, the entire process took an unduly long time. Development of irrigation and power must not wait till such matters are decided after protracted correspondence and time-consuming negotiations. Further, though certain agreements were arrived at, the validity of these agreements was questioned later. meanwhile, based on the agreements, projects were approved and taken up for execution setting in motion an irreversible process. Thus there is considerable risk attached to these arrangements since there is no guarantee that the final outcome will be in accordance with the assumptions made in the interim arrangements. Once irrigation is developed and subsequently the tribunal finds, with a gap or several years that some States are using more water than what can be equitably given to them as their share, it will be practically impossible to revert to the position existing prior to such development. Development of irrigation and power sources in the interregnum could create a situation akin to *factum valet* of a minor's marriage by consummation. Delays only complicate matters. There is a rush to start work on as many projects as possible so as to establish their rights by 'prememtive' action. This leads to wasteful use of scarce resources. The loss to the States and to the nation as a whole, is irreparable.

17.4.09 Section 3 of the Act permits the concerned States to apply to the Union Government for appointment of a Tribunal for referring the matter. The Rules framed under the Act require a State, which desires to refer a disputes under Section 3, to communicate, *inter alia,* information on 'the efforts, if any, made by the parties themselves to settle the disputes'.[7] Section 4 of the Act requires the Union Government

to set up a Tribunal *only when satisfied* that the dispute cannot be settled by negotiations. The Union Government can, therefore, withhold the decision to set up a Tribunal, indefinitely. It is this absolute discretion allowed to the Union Government in the Act which has been stated to be one of the main reasons for delay.

17.4.10 No one can dispute the merit of negotiated settlement. However, protracted negotiations may become counter-productive. We note that there is no bar to continued negotiations even after a Tribunal has been set up. Indeed, in the case of Krishna and Godavari Tribunals, ultimately it was a negotiated settlement that became the basis of the decision on the main issue framed by the Tribunal, i.e., "On what basis should the available waters be determined?"[8] We have already mentioned that in the Government of India Act, 1935, no discretion was available to the Governor-General in regard to setting up of a Commission once a reference was made by a Province, unless he was of the opinion that the issues involved were not of sufficient importance. The Administrative Reforms Commission's Study Team on Centre-State Relationship suggested that there should be a limit of three years to conclude the negotiations; thereafter reference to a Tribunal by the Union Government should be compulsory.[9]

17.4.11 We recommend that in order to cut short delays, it is necessary to prescribe a time-limit for the setting up of a Tribunal. Once an application under Section 3 of the Inter-State River Disputes Act is received from a State, it should be mandatory on the Union Government to constitute a Tribunal within a period not exceeding one year from the date of the receipt of the application from any of the disputant States. The Act may be suitably amended for this purpose.

17.4.12 There may be instances where States are not willing to apply to the Union Government for constitution of a Tribunal. As an instance, our attention has been drawn to the Cauvery dispute. This dispute had been lingering for the past many years and only on 6th July, 1986 Tamil Nadu applied under Secton 3 of the Act for referring the matter to a Tribunal. Under the existing provisions of the Act, the Union Government cannot do anything to appoint a Tribunal on its own motion, even if it is aware of the existance of a dispute in respect of an inter-State river or river valley.

17.4.13 Recently, in 1986, the Act (33 of 1956) has been amended empowering the Union to set up a Tribunal known as "Ravi Beas Water Tribunal", *suo motu,* or on the request of concerned State Government [Section 14(1) and Section 14(3) of the Act (33 of 1956)]. This amendment applies specifically to one particular inter-State river water disputes.

17.4.14 We recommend an amendment of the Central Act 33 of 1956 for general application, empowering the Union Government to appoint a Tribunal *suo motu,* if necessary, when it is satisfied that such a dispute exists in fact.

17.4.15 The next important cause of the delay is the inordinate time taken by Tribunals in making their awards. We find that in three cases, the Tribunals had taken, on the average, about 10 years for making the awards. One of the main reasons for *pendente lite* delay before a Tribunal, is that the requisite data for adjudication is not readily or adequately supplied by or made available from the States. At present, the Central Water Commission has a number of data collection Centres. But these are inadequate for the purpose of data collection. The Tribunals want up-to-date information on river flows, etc. States may not be willing to cooperate and the Union does not have any authority to compel the States to supply the necessary data. Stream lining the system of data collection will no doubt expedite the work of Tribunals. The National Water Resources Council in its meeting in October 1985, has recognised the need for the establishment of a Data Bank and an information system at the national level. We fully endorse the need for such a Data Bank and information system and recommend that adequate machinery should be set up for this purpose at the earliest.

17.4.16 We also recommend that there should be a provision in the Act that States shall be required to give necessary data for which purpose the Tribunal shall be vested with powers of a Court.

17.4.17 In paragraph 17.4.15 we have noted that one of the reasons for delays in settling disputes over inter-State river waters is the time taken by Tribunals to give their awards. The Act should, therefore, be amended to ensure that the award of a Tribunal becomes effective within five years from the date of constitution of a Tribunal. If, however, for some reason, a Tribunal feels that the five-year period has to be extended, the Union Government may on a reference made by the Tribunal, extend its term.

17.4.18 Once an award becomes effective, the question of enforcement arises. Section 6 of the Act provides that the Union Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them. However, if any State refuses to give effect to the award fully or even partially, the Union Government does not have any means to enforcing the award.

17.4.19 The Act was amended in 1980 and Section 6A was inserted. This Section provides for framing a scheme for giving effect to a Tribunal's award. The scheme, *inter alia* provides for the establishment of the authority, its term of office and other conditions of service, etc. But the mere creation of such an agency will not be able to ensure implementation of a Tribunal's award. Any agency set up under Section 6A cannot really function without the cooperation of the States concerned. Further, to make a Tribunal's award binding and effectively enforceable, it should have the same force and sanction behind it as an order or decree of the Supreme Court. We recommend that the Act should be suitably amended for this purpose.

5. *OPTIMUM UTILISATION OF WATER RESOURCES AND NEED FOR COMPREHENSIVE PLANNING*

17.5.01 Water is precious natural resource and no nation can afford to ignore the imperative need, for comprehensive planning to secure optimum utilisation of its water resources. The Irrigation Commission had recommended the establishment of a National Water Resources Council, as a policy making apex body with adequate technical support.[10] it was hoped that this Council would help develop a national outlook in relation to water resources and infuse a spirit of mutual accommodation in inter-State relationship and create a favourable atmosphere for the settlement of inter-State water disputes. The National Commission on Agriculture observed that "in view of the inadequacy of water resources to meet the future agricultural and other requirements in many parts of the country, it becomes a matter of great national importance to conserve and utilise them most judiciously and economically".[11] Comprehensive plans for the inter-State rivers covering irrigation, drainage, drinking water, inland water-ways and hydroelectric power generation should be prepared. Preparation of such plans requires proper evaluation of all existing water resources. This reinforces the need for proper institutional infrastructure for this purpose. No plan, howsoever comprehensive, and no institution howsoever strong, will be able to ensure proper and agreed utilisation of water resources of inter-State rivers and river valleys without the cooperation of the States. The National Commission on Agriculture also observed: "A river basin, and in the case of large rivers a sub-basin, is a natural unit for such a plan, as it has a defined watershed boundary and within it there is an inter-relationship between the surface and ground water resources. The river basin plan should present a comprehensive outline of the development possibilities of the land and water resources of the basin, establish priorities in respect of water use for various purposes, indicate the need for earmarking water for any specific purpose and indicate *inter se* priority of projects".[12]

17.5.02 We note that the National Water Resources Council, which was constituted in 1983, met for the first time in October 1985. In this meeting, the Council was unanimous that water should be treated as a precious scarce national resource and dealt with as such, and that there was urgent need for formulation of a national water policy with a view to ensuring optimum use of available water resources, both surface and ground, in national interest. In its second meeting held on September 9, 1987, the Council adopted a National Water Policy. This policy emphasises, among other things, that planning and development of water resources, also including inter-basin transfer of water, should be governed by a national perspective. This is a welcome step.

17.5.03 The inherent limitations of settling water disputes through a system of Tribunals are obvious and do not require any elaborate comment. It is only through willing cooperation of all concerned that the very complex issues involved in the development of water resources and sharing of the benefits can be satisfactorily resolved. The Helsinki Conference (1966) of the International Law Association observed: "Although certain disputes about international rivers and international river basin may land themselves to third party adjudication under established international law, the maximum utilisation of an international drainage basin can more effectively be secured through joint planning. The great number of variables involved, the possibility of future changes in the conditions of the water-ways, the necessity of providing affirmative conduct of the water-ways, the necessity of providing affirmative conduct of the basin States, and the enormous complexity of a river basin make co-operative management of the basin greatly

preferable to adjudication of each source of friction between the basin States"[13]. These observations are equally valid in the context of resolution of river water disputes in our country.

17.5.4 We hope that with more frequent meetings of the National Water Resources Council in future the points of difference between the States will be resolved through accommodation. Even in the past, more disputes have been resolved through negotiations than otherwise. The fact that in some cases, Tribunals were set up, cannot be allowed to overshadow or detract from the success achieved through negotiations. Often there is a political factor also. The ruling party in a State is seldom willing to run the political risk of becoming a party to an agreement which could be questioned and become an explosive emotional issue. In such a situation intervention by the Union Government and consideration of the various issues in the national perspective would help to clear the way for fruitful negotiations and resolution.

6. *RECOMMENDATIONS*

17.6.01 Once an application under Section 3 of the Inter-State River Water Disputes Act (33 of 1956) is received from a State, it should mandatory on the Union Government to constitute a Tribunal within a period not exceeding one year from the date or receipt of the application of any disputant State. The Inter-State River Water Disputes Act may be suitably amended for this purpose.

(Para 17.4.11)

17.6.02 The Inter-State Water Disputes Act should be amended to empower the Union Government to appoint a Tribunal, *suo motu,* if necessary, when it is satisfied that such a dispute exists in fact.

(Para 17.4.14)

17.6.03 There should be a Data Bank and information system at the national level and adequate machinery should be set up for this purpose at the earliest. There should also be a provision in the Inter-State Water Disputes Act that States shall be required to give necessary data for which purpose the Tribunal may be vested with powers of a Court.

(Para 17.4.15 and 17.4.16)

17.6.04 The Inter-State Water Disputes Act should be amended to ensure that the award of a Tribunal becomes effective within five years from the date of constitution of a Tribunal. If, however, for some reasons, a Tribunal feels that the five years' period has to be extended, the Union Government may on a reference made by the Tribunal extend its term.

(Para 17.4.17)

17.6.05 The Inter-State Water Disputes Act 1956 should be amended so that a Tribunal's award has the same force and sanction behind it as an order or decree of the Supreme Court to make a Tribunal's award really binding.

(Para 17.4.19)