

MECHANISMS OF CONFLICT RESOLUTION IN THE INDIAN CONSTITUTION:  
A STUDY OF RIVER WATER DISPUTES

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## PREFACE

During the twenty six years of the working of the Constitution of India many significant achievements have been made in the country. Planned economic development has made the nation self dependent in many respects. Besides advances in the economic fields, the country has witnessed some memorable successes in the fields of science and technology. However, several difficulties have arisen in Inter-State and Union-State relations leading to tensions between the various constituent units. In the past, these Centre-State and Inter-State tensions have threatened the normal functioning of the federal system and the country appeared on the verge of disintegration. The question that arose on such occasions was concerning the capability and effectiveness of the mechanisms - institutional and others - for conflict resolution.

The country has suffered heavily due to inter-State disputes. To-day, there is an imperative need to look into the problem of Inter-State relations. The present work is a humble attempt to study inter-State river water disputes and the mechanisms available within our political system and the constitutional framework.

I am obliged to the librarians of the Libraries of Jawaharlal Nehru University, Nehru Memorial Museum, Indian Council of World Affairs, Indian Institute of Public Administration and Central Secretariat for giving me all facilities to make use of the material available with them. Special thanks are to Mr. S.C.Tandon of Jawa harlal Nehru University

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## INTRODUCTION

Federalism as a system of Government involves a certain pattern of relationships between the regional governments on the one hand and the Central & regional government on the other. As the two sets of Governments do not and should not work in water-tight compartments, inter-state and Centre-state differences are inevitable.

Mr. Setalvad has rightly pointed out that the controversies that arise in a federation appear to be the necessary price we have to pay for the advantages of a federal set-up.<sup>1</sup> India is not an exception to this characteristic of federalism. In so many federal countries of the world, inter-State (and Centre-state) disputes have become a common feature. Water disputes and border disputes are two frequent areas of conflict and controversy. The concept of co-operative federalism which influenced the making of our constitution has created a machinery for achieving comity between the various units of the federal system. As will be seen later, some mechanisms have been provided in the constitution for settling water disputes but no specific machinery has been set up for the consideration of border disputes. Along with the provisions made in the constitution there are bodies like the Zonal Councils, the National Development Council and the Planning Commission which play an important role in resolving inter-state disputes to a great extent and thus help in normalising Centre-State and Inter-State relations in the Indian federal set-up.

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1. SETALVAD (M.C.) - Union and State Relations under the Indian Constitution - New Delhi, Eastern Law House, 1975 .. pp. 38-39.

In the past, river water development was comparatively very slow and most of the exploitation was done on the basis of self contained isolated works. For the same reason no major differences arose between the constituent units of British India in this sphere. Whatever differences of opinion arose were not allowed to assume disproportionate importance. The state or the province concerned did not create much hue and cry over river waters because of the dominating and unquestionable authority of the British Government.

Since the end of the nineteenth century there has been a large increase in the consumption of river waters for various purposes. With more or less the same quantum of waters available, the competition over their allocation and control between their different users was bound to rise, more particularly after independence. Every state Government thought in terms of getting maximum benefits for itself. Increasing demands of States and the limited availability of this precious gift of nature aggravated the problem. The whole situation assumed greater importance with the placing of 'water' on the State List.<sup>2</sup> Disputes arose regarding waters of the Narmada, Krishna, Godavari, Ravi, Beas, Sutlej, Indus, Cauvery, Yamuna, Periyar, Mahi, the Palar and other major rivers of India and the work of harnessing

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2. Entry 17, List II of the Seventh Schedule: "Water, that is to say, water supplies, irrigation and canals, drainage & embankments, water storage and water power subject to the provisions of entry 56 of List I".

their energy came to a stand still.<sup>3</sup> A major part of the waters of these rivers which could irrigate vast areas of unirrigated land flowed wastefully to the sea.

The position even to day is not very satisfactory. Because of such a large number of disputes, the country has failed to harness the water resources, these rivers carry. Many of the states and the country as a whole have to pay dearly for the postponement of the solution to these water disputes as development for the optimum utilisation of river waters cannot be taken up until the issues involved in the disputes are settled.<sup>4</sup> In addition to the economic losses these inter-State river water disputes cause to country, they have been factors responsible for mutual hatred and distrust. For, more than once, they have led to strained inter-State and Centre-State relations. The country can ill-afford the wasteful flow of its water resources into the sea.

It is obvious that in any attempt to derive optimum benefits from natural resources, conflicts between the Centre & the states on one hand and between the states themselves on

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3. The disputes over the Palar Waters rose when Tamil Nadu complained that Karnataka has violated the agreement of 1892 by constructing some irrigation projects on Palar. The dispute was resolved in an inter-state meeting held in 1956. In 1961, differences rose between Gujarat and Rajasthan over the height of the Kadana Dam to be built on the Mahi river. Other issues involved in the dispute related to the sharing of the waters and the cost of construction of the dam at Banswar. In an inter-state meeting an agreement was reached in January, 1966 between the two states and all the issues involved in the dispute were settled.
- Report of the study team of ARC on Centre-State Relationships, vol. II (Appendix 33), 1967, p.p. 126-27.
4. According to Dr. K.L. Rao, the former Union Minister for Irrigation and power, the country has been suffering a loss of Rs. 10 lakhs per day because of such disputes. Nav Bharat Times, December 4, 1974.



the other cannot be ruled out. What is required for minimising such conflicts and ensuring smooth functioning of the political system is the development of suitable machinery for resolving these conflicts.

The country has failed to become self-sufficient in providing food to its people on a continuing basis even after 26 years of planned development. This unhappy state of affairs may be attributed to a great extent to the presence of inter-state rivalries over the utilisation and distribution of river waters. The issues involved in such disputes assumed alarming importance in the past and have been even posing serious threats to the solidarity of the country as these have been viewed in isolation rather than as a part of the total water resources available in the country. The competition between the states in this connection has been so acute that an atmosphere of suspicion and ill feeling between the various components has been created in the country.

#### Objectives and Scope:

The present study has been conducted with the objective of providing some insights into the whole problem of inter-state water disputes. The process of evolving some solution to river water disputes by the state themselves and through arbitration have been studied. The importance of states being provided with sufficient natural resources (in proportion to their needs) to enable them to achieve and maintain a certain level of living for its people, has been high lighted. Mechanisms provided under the Constitution and various Acts passed by the Parliament have been examined. A detailed

study of one of the water disputes tribunals constituted under section-4 of the Inter-State Water Disputes Act, 1956 has been made.

Recently some progress has been achieved in the direction of finding solutions to water disputes, thanks to the efforts made by the Union Government.<sup>5</sup> Some disputes have been settled but several others are still pending either before water dispute tribunals<sup>6</sup> or before the Centre with appeals from state Governments concerned for referring these to tribunals.<sup>7</sup>

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5. The dispute over a large portion of the Godavari Waters was settled out of court by agreement between the Chief Ministers of Maharashtra Karnataka, Madhya Pradesh, Orissa and Andhra Pradesh on December 19, 1975. The dispute over the Ravi waters (Thein Dam) between Panjab and J & K (January, 1976) between Assam and Manipur on the Barak river (December, 1975) and between Orissa and Bihar on the Subarnarekha (January, 1976) are some of the disputes that have been settled recently.
  6. Disputes over the Narmada waters rose between Madhya Pradesh, Maharashtra and Gujarat. After making futile attempts for the mutually agreeable settlement, the Government of India constituted Narmada Water disputes Tribunal in 1969. The Tribunal is yet to give its award. Disputes among the states of Andhra Pradesh, Maharashtra and Karnataka rose over the allocation, utilisation and control of the Krishna waters. The Krishna Tribunal gave its report in December, 1973. However, it has given its final award in May, 1976 after considering matters sent to it for guidance and/or clarification by the Union as well as the state governments. Similarly the disputes over the Godavari waters between Maharashtra, Karnataka, M.P., Orissa and Andhra Pradesh was referred to arbitration in 1969. As agreed to by the parties, the dispute over the Godavari waters will be taken by the Tribunal only after giving final award over the Krishna waters dispute.
  7. The dispute between Tamil Nadu and Karnataka over the use and distribution of the Cauvery Waters rose as back as in 1850. After independence Kerala also entered the dispute. Of the three states involved in this dispute Tamil Nadu has been demanding the reference of the dispute to arbitration since 1962. Kerala also in 1972, demanded the constitution of a tribunal. But, no tribunal has been set up by the Government of India so far.

In part I, the importance of the distribution of natural resources between the states according to their needs has been pointed out so that each state is able to maintain an adequate level of economic development. But natural resources are limited almost every where. Every state is anxious to secure maximum advantages for itself which gives rise to inter-state conflicts. For achieving optimum utilisation of the natural resources and for harmonising inter-State relations, some mechanisms for conflict resolution are essential.

Constitutional provisions relating to the settlement of water disputes have also been dealt with. A brief history of the relationship that has developed among the states regarding river waters before and since independence has been given. The mechanisms provided in the Government of India Act, 1935 and in the Draft Constitution of India have been studied, as also the provisions made in the legislation, enacted in 1956 i.e. Inter-State water Disputes Act (No. 33 of 1956) and River Boards Act (No. 49 of 1956).

Part II deals with some water disputes and factors responsible for the considerable increase in inter-States river water disputes. A detailed case study of the dispute over the Krishna and the Godavari Waters has been made.

Part III contains a study in regard to the constitution, working and decisions of the water disputes tribunals. On these lines, a case study of the Krishna Water Dispute Tribunal has been made.

Finally some conclusions arrived at on the basis of this study have been presented. Recommendations made by various

committees, seminars and commissions have also been dealt with in this section. The idea of constituting a National Water Council at the apex and the formulation of national water policy have been examined: The importance of a negotiated settlement of water disputes for the optimum utilisation of water resources in India, has been high lighted. The proposal for a National Water Grid has also been examined.

#### Sources and Research Methodology:

In this study the content analysis technique, the historical approach and case studies approach have been followed. The content analysis approach, linked with other kinds of data has yielded useful insights. This technique has been followed for the collection of material from the leading news papers of the country which have in turn been of much use in studying the whole process of states coming to some mutually agreeable solution to inter-state river water disputes. The published records of the Government of India in the Ministry of Irrigation and Agriculture and the Ministry of Home Affairs, various constitutional documents, Reports of the Administrative Reforms Commission, the Irrigation Commission and the Raja-mannar Committee have proved useful for the study. Non-official sources like the newspapers, journals and the books on the subject have also been useful. Information was also collected from the office of the Narmada Water Disputes Tribunal and the Krishna and Godavari Water Disputes Tribunals.

In order to understand the present situation it is necessary to trace the origin of some river water disputes and therefore the historical approach has been adopted. Developments that have taken place in this field are presented. By

making use of this method the necessity of putting an end to all river water disputes has been highlighted by emphasising the harm these inter-State rivalries have been doing to the nation for decades.

In order to obtain a proper understanding of the constitution and working of water dispute tribunals, constituted under section 4 of the Inter-State Water Disputes Act, 1956, the case studies approach has been followed.

## CHAPTER I

### THE INSTITUTIONAL FRAMEWORK FOR CONFLICT RESOLUTION

In the present era, more than ever before, a duty has been cast upon governments to promote economic and social welfare of their peoples. It is for this that presently all governments strive to attain and maintain a certain standard of living for their peoples.

In a federation the governments of the federating units are also charged with a similar duty. For this economic development, natural resources are vital. So, what is required in a federation is that a reasonable regional balance in the availability and utilisation of resources should be maintained. As the population and problems vary from state to state, their needs of resources also vary.

There arises therefore the need for inter-relations between the states, which result occasionally in differences and disputes between them. The limited availability of natural resources, particularly in a developing country like India, makes the whole problem a little more complicated. Thus, the importance of making provisions for suitable mechanisms for minimising such inter-State disputes and resolving them should be emphasised.

Before making a study of river water disputes and mechanisms for resolving them, a study of the importance of river waters in the building of national economy, would be useful.

Land, water and people go together. The people cannot

reach the highest standard of well being, unless there is the wisest use of land and water. This is true for most countries of the world, and is certainly true for India. The economic prosperity of India depends now more than ever on the development of country's land and water resources. The rainfall here is generally confined to the period of the south-east monsoon.<sup>1</sup>

If rainfall in India occurred through out the year, the country would not have to worry so much about water.<sup>2</sup>

India being an agricultural country, the development and utilisation of river waters is of crucial importance. The rainfall is so undependable that agriculture in India even today continues to be a gamble with the monsoon. By making available an assured supply of water for irrigation the uncertainty caused by unreliable rainfall can be mitigated and an increase in production can be effected.

India's water resources: In terms of water resources, India can hardly be said to be in a satisfactory position. So far, the nation has taken water as an unlimited gift of nature and has used it without proper planning and management. The result is the fall in food production in the absence of an assured supply of water for irrigation. Dr. K.L. Rao has rightly pointed out that it is erroneously considered that India has vast water resources.<sup>3</sup> There is no doubt that the

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1. In India percent rainfall during January to May is 13 while during June to September it is 73.7 Norottam Shah in DAGLI (vadi Lal) ed. Natural Resources in the Indian Economy, Bombay, vora and Company, 1971,p.19
  2. DAGLI (Vadi Lal), Planning for Water, Commerce, Annual Number, Vol. 131 (3372), 1975 p.5.
  3. RAO (K.L.) - India's Water Wealth, New Delhi, Orient Longman, 1975 p. XVI.

quantity of water available here is abundant, but a major portion of the available waters cannot be put to productive use. For example, rainfall in an average year in India is 125 cms. but a little more than one fifth of it is actually put to use, the rest drains into the sea.

For example most of the Brahmaputra's waters are not utilised for irrigation or power purposes. Out of about 310 Million Acre Feet of this river's waters hardly about 10 MAF can be practically put to use. The rest flows into the Bay of Bengal unutilised. Similarly the Ganga carries about 400 MAF of waters and out of it, it is possible to make use of only about 150 MAF for irrigation purposes. There is very little possibility of making use of major part of the waters of West flowing rivers of India. Only about 40 MAF of their total flow of 200 MAF can be put to use for irrigation and hydel power making purposes because of the very short distances traversed by them in their flow to the coast and the nature of the terrain.<sup>4</sup>

About one fifth of the Indus waters are available for use to India under the 1960 agreement with Pakistan. However, there is every possibility of utilising about 62 percent of the total waters of the east flowing rivers including the Mahanadi as there is a sizeable water potential in these. The waters of the Cauvery have been practically fully utilized. As regards other rivers like the Godavari, the Krishna, and Narmada, preliminary studies made by the Government of India

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4. Report of the Irrigation Commission, Ministry of Irrigation and Power, New Delhi, Vol.I, 1972 p.57



show that the entire waters of these rivers can be utilised.

Under certain favourable conditions river waters provide a cheap source of power either directly or through the generation of hydro-electric power. The main factors that have contributed to the crucial role of water power in India are their availability, their fairly even geographical distribution and their overall economy. Hydropower constitutes the cheapest source of electricity production in the country today with the cost of generation ranging from 2 to 3 paise per unit compared to a minimum of 5 paise per unit of coal based thermal power production.<sup>5</sup> Along with this economy in production, other benefits have also contributed to the rising tempo of development of hydro power resources of India. The poor quality of coal available and that also confined to a few regions makes its use very difficult and uneconomic for generation of power.

From what has been said, it is very clear that the available supplies of river waters in India are limited and insufficient to meet the increasing requirements of waters for hydel power, irrigation, industries etc. Before independence the states did not recognise the immense importance of river waters. Moreover, they did not have the necessary finances and technical know-how at their disposal to harness them fully. The states never took serious note of the exploitation of river waters by the other co-basin states. Consequently, there were very few inter-state disputes over river waters.

After independence the states began to realize the value of river waters as a means of economic development. A competition started among them for the utilisation of river waters

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5. RAO (K.L.), Op. cit., p. 132

which resulted in frequent differences and disputes.

But this is not a new thing for India. Under any federal system in which the state governments possess a significant degree of autonomy, conflicts are likely to arise between the Centre and the States and among States inter-se.

For a settlement of such disputes, the constitution of India vests in the Supreme Court the exclusive jurisdiction to settle such disputes (Article 131(a)(b)(c)). In addition to this extra legal judicial adjudicatory machinery is provided for by the Constitution under Article 262 for settling inter-state water disputes because the jurisdiction of the Supreme Court or any other Court has been barred in Clause (2) of the same article in this regard.

#### Evolution of Institutional Arrangements:

A Military Board was responsible for conducting the necessary work in the field of irrigation during the early days of British Raj. The Board had a team of Military engineers to carry out the whole business. The Public Works Department was set up in 1854 after the abolition of the Military Board and then irrigation works came under the overall charge of this department.

Because of the great success of Military engineers some private entrepreneurs also took to the exploitation of rivers under the "guarantee system" provided by the Government of India. Under this system, the Government of India guaranteed a return of 5 percent on the capital outlay. Consequently two irrigation companies East India Irrigation and Cannal Company and the Madras Irrigation Company were set up. But these did not prove

worthy of the task and were finally taken over by the Government of India.

In 1866, certain decisions were taken by the Government of India regarding the harnessing of rivers. It was decided that all irrigation projects should be undertaken by state agencies and they should be planned with a view to obtaining maximum utilisation of river waters without allowing political boundaries to come in the way. Regarding financing of such irrigation projects, it was provided that public loans should be raised specially for this purpose.

Thus until 1921, the Government of India and the Secretary of State in London exercised powers of superintendence, direction and control on all activities relating to irrigation through the Inspector-General of Irrigation and Public Works Secretariat at the Centre. The Government of India always possessed what may be called a common law right to use and control, in the public interest, the water supplies of the country. All the major irrigation works were under the control of the Central Government and the irrigation works exceeding Rs. 10 Lakhs were to be started with the sanction of the Secretary of State. The Government of India was responsible for raising loans for the sanctioned projects and the Provincial Governments had to pay interest which varied from time to time, to the Government of India. However, the provincial Governments were responsible for the actual execution of the irrigation works.

During those days, conflicts between the constituent units of British India were very few because the projects undertaken were generally limited to a single province. In case of any

dispute between the different constituents the matter was either solved by mutual agreements or by the orders of the Secretary of State.

In 1921, irrigation became a Provincial but 'reserved' subject. The expenditure on it was not subject to the vote of the provincial legislature. The rigid control exercised by the Secretary of the State and the Government of India vanished but the administration of irrigation projects was reserved to the Governor in Council and was, therefore, under the ultimate control of the Secretary of State. The provincial governments could take up any project involving more than five million rupees after obtaining the prior approval of the Secretary of State. Similarly, such approval was essential when the irrigation projects affected more than one province.<sup>6</sup>

However, the Provincial Governments could now raise loans for financing the irrigation projects themselves and had not to depend upon the Government of India for this. An attempt was made to reach agreements between the parties before these disputes were referred to the Government of India and decisions were given in an executive capacity.

In April, 1937, the position of the Centre and Provinces in regard to the control and utilisation of river waters underwent great changes. With the introduction of provincial autonomy the Provincial Governments got, full powers over irrigation works and their development. Irrigation became a transferred subject and the Central Government was no longer concerned

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6. GULHATI (N.D.), Development of Inter-State Rivers, Bombay, Allied Publishers, 1972, p. 24

with the development of irrigation projects except in cases when there was a dispute between two or more provinces.<sup>7</sup>

Item 19 of List II (Provincial List) of the Seventh Schedule to the Government of India Act, 1935, reads: "19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power."

In the Government of India Act, 1935, provisions were made for resolving inter-State Water disputes. The question of providing the most suitable mechanism for settling such disputes was discussed in detail and the conclusion arrived at was that the jurisdiction of the Federal Court should be barred. It was decided that the disputes should be settled by the Governor-General after obtaining the advice of a special commission constituted for this purpose. Such a commission was to consist of persons having special knowledge and experience in irrigation, engineering, administration, finance or laws. The Governor-General was to give his decision after considering the report forwarded by the commission. A similar commission was constituted in 1941 under the chairmanship of Shri B.N. Rau to investigate the dispute between the Punjab and Sind over the sharing of the Indus waters.

This position continued upto 1950 when the constitution of independent India came into force. The study of the state of affairs in the pre-independence era makes it clear that the British Rulers did not observe any principles while dealing

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7. For relevant provisions under the Government of India Act, 1935. See Appendix -I.

with water disputes among various components. What they aimed at was to maintain their unchallengeable control over the whole country. The best example of their exercising their powers in their discretion is the agreement that was entered into by the states of Madras and Mysore in 1892.<sup>8</sup> Clause-IV of this agreement provided that in case of any dispute, the matter was to be referred to arbitration. There was no provision for appeal against the decision of the arbitrator.

In 1914, a dispute arose between the two states over the reservoir at Krishnaraja Sagar. The matter was referred to arbitration. The arbitrator in his award favoured the State of Mysore. This award was later on ratified by the Government of India. But Madras made an appeal against the award (which under clause IV of 1891 agreement was to be final and binding) and the Government of India persuaded the state of Mysore to reopen the talks and finally the agreement of 1924 was signed. Regarding this agreement Berber writes "The Cauvery dispute between Mysore and Madras settled in 1925 was a dispute between British India and the other was a dependable princely state under the British suzerainty. The dispute was not settled by the application of law but through the authoritative decision of the sovereign power or the British Crown."<sup>9</sup>

For a major part of time the Government of India had the

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8. For details of this agreement entered into between Mysore and Madras for sharing the Cauvery waters, see HUSSAIN (M. Basheer), Cauvery Water Dispute, Mysore, Rao and Raghvan, 1972, pp.1-17.
9. BERBER (F.J.) "Rivers in International Law", London, Stevens and sons, 1959, pp.180-81

power to pass orders on any question of water rights. However, no principles were developed to govern water rights between the component parts. There was a wide variation in the manner in which similar matters were settled on different rivers because each case was decided on its own merits. In general, the Provinces enjoying a superior political status got a better deal than the princely States. What prevailed in each case was the discretion of the Rulers.

Damodar Valley Corporation. The formation of Damodar Valley Corporation on the model of the Tennessee Valley Authority in the United States was definitely an important step in the direction of inter-State cooperation in harnessing national rivers. As the provincial authorities had legislative authority over water supplies, irrigation, canals, water storage etc., the two Provincial Assemblies delegated their authority to the Union Parliament and the Damodar Valley Corporation Act was passed on 18th February, 1948.

The setting up of D.V.C. in India has not proved as successful as was expected. The measures of autonomy to be given to the Corporation had been the basis of contention between the two participating Governments of West Bengal and Bihar. Because of D.V.C. not fulfilling the hopes associated with its set-up, the Central Government is not willing to set up new corporations. A proposal to establish a Central Authority in over all charge of the development of the entire Narmada Valley somewhat on the lines of the Tennessee Valley Authority was under the active consideration of the Central Government in 1961, but the idea of setting up such Valley

Authority was later on abandoned.<sup>10</sup>

It is generally agreed that through such Corporations the optimum utilisation of water resources can be well achieved. But in the case of India such an authority will be able to reconcile the interests of the Individual States and the river basins as a whole only, if, the contenders are prepared to scale down their obviously exaggerated claims, which until very recently no state was willing to do.

#### The Present Constitutional Position

Irrigation continues to be a state subject under the Constitution of India which came into force in 1950. Entry 17, List II of the Schedule VII reads, "Water, that is to say, water supplies, irrigation and canals, drainage and ambankments, water storage and water power subject to the provisions of entry 56 of List I." Entry 56 of List I does not come in the way of state governments in exercising the powers conferred on them under Entry 17 of the List II. But it empowers the Central Government to legislate with respect to "regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest." The scheme of the Constitution thus becomes very clear; it leaves water and subsidiary matters relating to water supplies within the legislative jurisdiction of the States. Thus, the Union Government can not, by virtue of Entry 56, acquire the rights

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10. Report of the Ministry of Irrigation and Power, 1961-62, p. 27.



in respect of water and other subsidiary matters except when expressly provided in any law made by Parliament.

For the settlement of Inter-State water dispute, the Draft Constitution initially contained identical provisions as in the Government of India Act, 1935. Articles 239-242 were corresponding closely to sections 130-134 of the Act except in one respect:

List I (Union List) Entry 74 making a departure from the earlier position reads "The development of inter-state water ways for purpose of flood control, irrigation, navigation and hydro-electric power."

But Dr. B.R. Ambedkar moved an amendment in which he emphasised the necessity of a permanent body to deal with the disputes. It was feared that the number of inter-State water disputes would increase because of the planning for full exploitation of inter-State rivers for increasing irrigation and power potential in independent India. In proposing this amendment Dr. Ambedkar said ".....the original draft or proposal was too stereotyped to allow any elastic action that may be necessary to be taken for meeting with these disputes. Consequently, I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes." 11 Accordingly, Article 262 was adopted which reads:

"262(1) Parliament may by law provide for the adjudication of dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-state river or river valley."

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11. Constituent Assembly Debates, Vol. IX, page, 1187.



"(2) Notwithstanding anything in this constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction as is referred to in Clause (1)"

From this Article 262 of the constitution, what becomes evident is that the Union Government has not been entrusted with full authority for the development of inter-State water ways for the purposes of flood control, irrigation, navigation and hydro-electric power. In this respect, arrangements made in the Draft Constitution of India, were unique. (Entry 74, List-I "The development of inter-state water ways for purposes of flood control, irrigation, navigation, and hydro electric power.") When compared to the arrangements provided in the Draft Constitution, the provisions in the constitution that came into being in 1950 leave it to the Union Parliament to legislate for the regulation and development of inter-State rivers and river valleys to the extent to which such regulation or development under the control of the Union is considered to be expedient in the public interest (Entry 56 of List-I). The Constitution also empowers the Union Parliament to legislate 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.

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The absence of a machinery for settling an increasing number of disputes among states has been felt from the very beginning. The necessity of having some such mechanism to deal with the issues effectively became more acute when the work of a large number of multipurpose projects was held up because of friction among the states. The Central Government, after consultations with the State Governments and the Planning Commission, reached the conclusion that River Boards could provide



an efficient machinery for achieving optimum regional development as well as fostering a cooperative approach. In this way, a different approach in solving the problems of federalism under the Indian Constitution is offered by the work of River Boards.

The Krishna Godavari Commission (1962) also recognised the importance of River Boards. In its report it recommended that, "..... an inter-State body, a River Board or by whatever name called should be established without any delay for bringing about a co-operative approach and establishing the necessary condition in the planning and operation of various developments in the two rivers basins. The integrated operation of various projects would not be possible without such a co-ordinating body."

#### The River Boards Act.

The Union Government is empowered to enact laws with respect to regulation and development of inter-State rivers and valleys under item 56 of the first list to the Seventh Schedule. In exercise of the powers under this item Parliament enacted the River Boards Act of 1956 which authorised the Union Government to establish a River Board for advising the Government in relation to matters concerning the regulation or development of inter-State rivers or river Valleys or any specific part thereof. The Act provides for the Constitution of River Boards for regulation and development of inter-state rivers by the Union Government in consultation with the state Government. Section 2 of the <sup>Act</sup> States, "It is hereby declared that it is expedient in the public

interest that the Central Government should take under its control the regulation and development of inter-State rivers and river valleys to the extent here in after provided." The River Board Act, 1956, however, does not curtail the powers of the State-Governments entrusted to them by the Constitution by giving any authority to the Union Government to develop or regulate the waters of inter-state rivers. It does not give the Centre the power to lay down any policy or directive principles relating to the use of these waters.

It only gives power to the Union Government to set-up a River Board for any inter-state river for advising the Governments concerned on any matter concerning the regulation or development of any specified inter-State river or river valley within its area of operation and in particular advising them in relation to the co-ordination of their activities with a view to resolving conflicts among them and to achieve maximum results in respect of the measures undertaken by them (Clause 14(a)). The aim of constituting River Boards under the Act is made clear by Clause 14(b) which states that these Boards shall be constituted for preparing schemes including multipurpose schemes for the purpose of regulating or developing inter-State river or river valley and advising the Governments interested in undertaking measures for executing the schemes prepared by them. If conflicts arise over any advice tendered by the Board owing to the refusal or neglect of a State in undertaking a programme developed by the Board or the sharing of any financial benefits or liabilities arising under the programme, any of the Governments affected by this condition can refer the matter under dispute for arbitration. The

Board's decision shall be final and binding on the parties to the dispute and shall be given effect to by them (Sec.22).<sup>12</sup>

The Central Government intended to set up River Boards on all important rivers within a few years of the passing of River Boards Act, 1956. The Planning Commission also supported the idea. In the Third Five Year Plan, it emphasized the importance of such bodies in the settlement of water disputes in the words: 'For integrated and economic development of water resources arrangements for inter-State Co-operation are essential. The setting up of River Boards for important river basins as envisaged in the River Boards Act, 1956, would enable a co-ordinated view to be taken of the need of a river basin as a whole.'<sup>13</sup>

However, for several years nothing was done in this regard by the Central Government. On March 22, 1962, it was announced that it had drawn up plan for the establishment of river Boards on the Mahanadi, Tapti, Mahi, Yamuna, Krishna, Godawari, Sutlej, Beas, Ravi, Cauvery, Ajoy basins and the Chenab.<sup>14</sup> It was also declared that these Boards had been designed to help in controlling and regulating the supplies of the inter-State rivers for optimum utilisation and dealing effectively with the problems of irrigation.

The Ministry of Irrigation and Power in its report for 1961-62 disclosed that the Central Government had consultations with the States concerned with four river basins: Maha-nadi, Narmada, Tapti and Mahi.<sup>15</sup> The Minister of State in the

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12. For further details see Appendix - III

13. GULHATI (N.D.), "Development of Inter-State Rivers", 66.  
cit, p.44.

14. Asian Recorder 1962, p.4524.

15. Report of the Ministry of Irrigation and Power, 1961-66 p.27.

Ministry of Irrigation and Power, Mr. Alagesan told in the Lok Sabha on March 28, 1963 that after ascertaining the views of concerned States regarding the establishment of River Boards, the Central Government was preparing to set up the Boards and some of these were expected to come into being within a couple of months.<sup>16</sup> A supplementary grant was sanctioned by the Union Parliament to meet the expenditure for the setting up of River Boards. But there came a sudden change in the policy of the Government and the plan of setting River Boards was dropped.<sup>17</sup> Stating reasons for that Dr. K.L. Rao, the Union Minister of Irrigation and Power, said in the Lok Sabha that there were nearly 50 important inter-State rivers and tributaries in the country. To constitute River Boards for those rivers or for even a third of them would involve a heavy outlay of funds and technical personnel. He further said that the unhappy experience of Damodar Valley Corporation was also to be kept in view before framing further statutory bodies like the River Boards.<sup>18</sup>

Another factor to which could be attributed the volte-face in the policy of Government of India was that at that time problems of States regarding the preparation of schemes for the optimum utilisation of inter-State rivers were dealt

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16. India, "Lok Sabha Debates", Vol. XV, 1963, p. 6572.

17. Report of the Ministry of Irrigation and Power, 1962-63, P. 24.

18. India, Lok Sabha Debates, 1963, Vol. 23, p. 3140.

with by the Central Water & Power Commission.<sup>19</sup> The Central Government held the view that it was of no use to have parallel organisations like River Boards.

Consequently the idea of constituting River Boards was dropped and the Government of India decided to strengthen the existing organisation like the Central Water and Power Commission which was a Central Organisation with full technical personnel. This Commission carried out the essential functions that were contemplated to be assigned to River Boards during the period (1963-1976).

However, the first River Board was set up by the Government of India in 1976 for the Betwa river, a major tributary of the Jamuna at Rajghat. The Board would execute and operate the Rajghat Dam project on behalf of the Governments of Madhya Pradesh and Uttar Pradesh. The Union Minister for Agriculture and Irrigation would be its Chairman. The Chief Ministers of U.P. and M.P. and Ministers of these States incharge of Irrigation and Finance would be the members of the Board. The Board would exercise the powers of general superintendance and control.

19. In 1945 a Central Water ways, Irrigation and Navigation Commission was constituted by the Government of India. This Commission was reconstituted in 1948 and was renamed as the Central Water & Power Commission.

The Commission is attached with the Ministry of Irrigation and Power and has two wings - water and power. It consists of a Chairman, Vice-Chairman and seven members, three in the waterwing and four in the powerwing at the Centre. It is also also entrusted with the responsibility of initiating, co-ordinating and furthering schemes for the control and utilization of water resources in the country for various purposes.

but the management of affairs of the Board would be vested in an executive Committee consisting of officers of the two State Governments and the Central Government. In case of any dispute the Government of India would be the final authority.<sup>20</sup>

The River Boards Act, 1956 provides a machinery which aims at securing optimum regional development and has the potential for fostering a co-operative approach. The Act lays emphasis on the importance of the basin-wise development and provides machinery for tendering advice on the subject to the concerned states. But unfortunately it does not contain any specific provisions for engendering co-operation between the states. Also the Act does not give River Boards full powers to co-ordinate the activities of the Governments interested in various projects or to ensure that the assumptions on which these projects have been sanctioned by the Planning Commission would be carried out by the Governments interested.

#### The Inter State Water Disputes Act

The Parliament enacted the Inter State Water Disputes Act, 1956 along with the River Boards Act. The Act sets out broadly the various steps in the adjudication of disputes relating to the waters of inter-State rivers and river valleys. The Act authorises the Central Government, on the request of a State Government to constitute a Tribunal for adjudication. "No reference shall, however, be made to a Tribunal of any dispute that may arise regarding any matter which may be referred to arbitration under the River Boards Act, 1956" (Section 8).

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20. Hindustan Times, March 31, 1976. Also see "A National Asset", Statesman, April 4, 1976.



The various stages for the adjudication of disputes laid down in the Act are as follows:

a) a request by a State Government to the Central Government for reference of a water dispute arising with another state Government to a Tribunal for adjudication.<sup>21</sup>

b) constitution of a Tribunal by the Central Government for adjudication of the disputes, if, the Central Government is of the opinion that the water dispute can not be solved by negotiations.<sup>22</sup>

c) composition of the Tribunal which is to be comprised of a Chairman and two other Members nominated by the Chief Justice of India from amongst persons, who at the time of such nomination are Judges of the Supreme Court or of a High Court.<sup>23</sup>

d) Appointment of assessors by the Tribunal to advise it in its proceedings.<sup>24</sup>

e) Investigation of the matters referred to the Tribunal and a report to the Central Government containing decision on matters referred to it.<sup>25</sup>

f) publication of the decision of the Tribunal which is to be final & binding on the parties and shall be given effect by them.<sup>26</sup>

g) bar of jurisdiction of Supreme Court and other courts in respect of the water dispute referred to the Tribunal under the Act.<sup>27</sup>

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21. Section 3.  
 22. Section 4(i)  
 23. Section 4 (ii)  
 24. Section 4(iii)  
 25. Section 5(ii)  
 26. Section 6  
 27. Section 11.

h) Dissolution of the Tribunal after its forwarding the report, if, the Central Government is satisfied that no further reference to the Tribunal would be necessary.<sup>28</sup>

When a request is made by a State Government to the Central Government to refer a particular water dispute to a Tribunal a duty is cast upon the Central Government to consider whether the dispute can or can not be solved by negotiations. It is only when the Union Government is satisfied that the dispute cannot be settled by negotiations, that it is required to constitute a tribunal and make a reference of the dispute to it. It is not necessary for the Central Government to wait for a complaint from a State Government before making an attempt to settle the dispute. The negotiations for the settlement of the dispute may precede or follow the request made by State Government to the Central Government for the appointment of a Tribunal.<sup>29</sup>

Regarding the opinion of the Central Government contemplated by section 4(1) of the Act, the question that arises is whether such opinion of the Central Government is subjective or objective. The matter has not come up before the Supreme Court or any other court, but the trend of certain decisions of the Supreme Court would seem to indicate that if the Central Government fails to act upon the request made by a State Government or forms the opinion arbitrarily that the dispute cannot be settled by negotiations, the matter can be taken to a court

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28. Section 12.

29. For details see Appendix-II

of law.<sup>30</sup> The Central Government should have sufficient grounds to show that the dispute could not be settled through negotiations, if the matter is challenged before any court of law. This becomes all the more important because an arbitrator is not empowered to see if conditions precedent to the constitution of the tribunal existed or not.

It appears that the Act has left a lacuna regarding the implementation of the decision of the Tribunal by the concerned States. Section 6 of the Act lays down that the decision of the Tribunal on matters referred to it, shall be final and binding on the parties to the dispute and shall be given effect to by them. There is a possibility that an affected state may refuse to comply with the award. In 1956, when the Act was passed, it was hoped that all the states would abide by the decision of such a high powered Tribunal constituted by the Central Government. In 1969, when a Tribunal was constituted the Chief Minister of Madhya Pradesh stated that if the decision of the Tribunal on the Narmada dispute were to go against Madhya Pradesh, the State Government would not be able to implement it.<sup>31</sup> The Constitution does not provide any remedy in such cases. Because of uncertain position it seems that there could be two options available. The

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30] From the decisions of the Supreme Court in *Rohtas Industries vs. D. Aggarwal* (AIR 1969, Supreme Court, p.707) it is evident that the opinion of the Central Government that the dispute can not be settled by negotiations is justiciable and capable of being substantiated.

31. "No Stalling on Narmada", Hindustan Times, June 10, 1969

first if that in such cases the jurisdiction of the Supreme Court under Article 131 could be invoked. Section 11 of the Act bars the jurisdiction of the Supreme Court or any other Court of law only in respect of any water dispute which may be referred to a Tribunal under this Act but it does not bar the jurisdiction of Supreme Court under Article 131 in respect of the dispute regarding the implementation of the decision of the Tribunal.

The Supreme Court can also acquire the power of jurisdiction over the decisions of the Tribunal under Article 136 of the Constitution by exercising its special appellate jurisdiction over the Tribunal. The Supreme Court in its decision in *Durga Shanker Vs. Raghuraj Singh* in 1954 held that Article 329 (b) would not bar its supervisory jurisdiction. However, the Supreme Court would be exercising its powers under Article 136 in exceptional cases of jurisdictional errors or where there is an error apparent on the face of the record.<sup>32</sup>

Another choice in this regard would be suitable amendments in the Inter-State Water Disputes Act, 1956. For this terms of reference of the dispute to the Tribunal should not relate to the waters of an inter-State river but should also include the implementation of its decision. The provision will have to be made that the Tribunal shall not be dissolved after the submission of its decision but shall be there until the whole dispute including the implementation of its decision, has been

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32. India, Supreme Court Reports, 1955, p.267

solved.

Comparison of Provisions before and after independence.

The provisions made under the Constitution of India and laws passed there under are radically different from these under the Government of India Act, 1935, in the following respects:

(i) Under the Government of India Act, 1935, the Governor-General was required to appoint a commission comprising experts having special knowledge and experience in irrigation, engineering, administration, finance or law, speciall appointed to investigate into the complaint. He did not have any discretion in referring the matter to a commission. Under the Inter-State Water Disputes Act, 1956, the Government of India has to refer a river water dispute to a tribunal, only if in its opinion, it cannot be settled by negotiations. Thus, discretion is left with the Government of India, whether to appoint a tribunal or not and its decision in this regard can not be challenged in any court of law.

(ii) The recommendations and findings of the commission appointed by the Governor-General under the Act of 1935 were recommendatory and the Government of India, on the basis of those findings, was to give its decision which was to be final and binding on the parties to the dispute. But the award of a tribunal constituted under clause 4 of the Inter State Water Disputes Act, 1956, is final and binding on the parties and shall be given effect by them.<sup>33</sup>

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33. However, under section 5(3) of the Inter-State Water Disputes Act, 1956, a water dispute tribunal is required to entertain requests from State Governments or the Union Government seeking further clarification and/or guidance on such matters as have not been originally referred to it. Its award is final and binding on the parties only after giving such clarification and further guidance.

(iii) The Governor-General or His Majesty in Council would have given his decision largely on engineering and administrative considerations. But a decision given by a water disputes tribunal is in accordance with law because, as its composition suggests, there are persons on it with judicial experience who can not be expected to have experience in engineering and financial issues involved in the disputes.

(iv) Under Section 133 of the Government of India Act, 1935, the jurisdiction of the Federal Court was excluded from all matters in respect of water rights. But under the existing laws it is not wholly excluded (the jurisdiction of the Supreme Court or any other court has been excluded only in respect of any water dispute which may be referred to a tribunal under the Government of India Act, 1956).<sup>34</sup>

#### Other Agencies for Conflict Resolution.

The Indian federal system has provided for some other bodies which can play a role in promoting the optimum utilisation of national water resources. The most important of them are the Zonal Councils, The Planning Commission and the National Development Council, whose contribution in this respect is examined here.

Zonal Councils. For promoting cohesion and unity and for minimising friction among the states, one of the co-operative arrangements made by the Government of India are the Zonal Councils set up under the State Reorganisation Act, 1956.

Zonal Councils are advisory bodies with authority to make recommendations in matters of inter-State or Union-State concern.

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34. Section 11 of the Inter State Water Disputes Act.

Each council is competent to discuss any matter in which the Union and one or more than one states or the states inter-se are jointly involved and is required to advise them on such matters.

In fact, the main purpose of Zonal Councils is to provide a forum for closer cooperation among the states in each zone in matters of common concern. The Zonal Councils have not proved effective in many areas but their record in the field of cooperation between the Centre and the States and among States inter-se in respect of exploiting water resources in the country is some what better.<sup>35</sup> In some cases joint committees of the officers of various states have been set up to consider inter-State irrigation and power schemes. The two Governments of Madhya Pradesh and Uttar Pradesh agreed on coordinated measures in fields of irrigation and power projects at a meeting of the Central Zonal Council in July, 1972.<sup>36</sup> At a meeting of the Northern Zonal Council held in New Delhi in July, 1972, an accord could be reached for a more equitable distribution of the Ravi and Beas waters between the Punjab, Haryana and Jammu & Kashmir.<sup>37</sup>

Planning Commission. In addition to the agencies discussed above there are some advisory bodies and conferences at the union level. One such body which helps eliminate friction between

35. Long standing disputes between Madhya Pradesh and Uttar Pradesh in regard to Sharing of benefits from Matatila and Rihand Projects were resolved in the meeting of Central Zonal Council held in October, 1969. Report of the Ministry of Home Affairs, 1969-70, p.74

36. Statesman, July 11, 1972.

37. Tribune, July 31, 1972.

the states and promote co-ordination between them is the Planning Commission.

The Planning Commission is not mentioned in the constitution but is the outcome of a Resolution of the Cabinet in 1950. The Planning Commission is mainly to prepare plans which are to be prepared in consultation with the Centre and State Governments and recommendations are to be made to the Cabinet.

With the passage of time a practice has grown which has resulted in having top ranking ministers on this body, with the Prime Minister as its chairman. Decisions arrived at in this body itself are accepted in toto by the Cabinet. In this way the advisory body envisaged under the Regulation of 1950 has disappeared and its place has been taken over by an organization which plays an important role in the formulation and implementation of executive decisions taken by the Union Government in the economic sphere. In the words of Dr. K. Subba Rao, "It (the planning Commission) has grown in prestige by its intimate connection with important Cabinet Ministers of the Centre and by its control of the nation's economy. Over the years it has developed into a super cabinet."<sup>38</sup>

For the same reason a study team of the Administrative Reforms Commission in its interim report recommended that the Planning Commission should have an advisory role as was primarily proposed in the Resolution constituting the Commission. It should play the role of an objective and impartial expert.<sup>39</sup> The

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38. RAO (K. Subba Rao), "The Indian Federatism", p.51 quoted in Report of the Rajamannar Committee, Madras, 1971, p.106.

39. Report of the Study Team - Machinery of the Government of India and Procedures of work, Administrative Reforms Commission (Part-I), New Delhi, March, 1967 pp.16,17.



recommendations of the ARC have not been accepted by the Government of India. Even today, the Planning Commission continues to perform many executive functions. Therefore, the states do not have much faith in its impartiality and the hopes associated with the Planning Commission as a co-ordinating body between the Centre and the States have been more or less falsified. National Development Council. A deliberative body in the field of economic planning constituted by a resolution of the Government of India in 1952, is the National Development Council. It is composed of the Prime Minister, the Chief Ministers of all the states and the members of the Planning Commission. Its important function is to review the progress of plans from time to time and suggest measures for achieving the goals set out in the national plans.

The National Development Council provides an opportunity to the Prime Minister to discuss general policy matters with the representatives of the states. State Chief Ministers also find a forum in this body to express their difficulties. Differences between the States are also discussed and sorted out in this body.

But, this body has also not proved very useful because while the Planning Commission has emerged as a Super Cabinet, the National Development Council has become more or less a rubber stamp of the Planning Commission. A study Team of ARC in its report has suggested that the National Development Council should play more beneficial role.<sup>40</sup> For that it has

40. The Interim Report of the Study Team on the Machinery for Planning Commission, ARC, 1967, p.8.

recommended that the Planning Commission should prepare plans on the guide lines suggested by this body. The task of assessing the resources required for the implementation of the plans in the country should be entrusted to this body which should also suggested measures for raising them.

Water disputes and Centre State Relations. Until very recently the role played by the Central Government in helping the states to reach a settlement regarding inter-State water disputes could hardly said to be satisfactory. Its failure to resolve many inter-state river water disputes pending for years had repercussions on inter-State relationships.

The prime consideration that enters the allocation of the river waters is the interest of the states involved. As a result of this narrow approach adopted by the states, exaggerated claims, far in excess of their needs, are put forth by the states. States having supply of water more than the quantum they could put to practical uses, would allow it to run waste rather than agree to divert it to the needy neighbour states. Water requirements of other projects proposed and planned by the neighbouring states on an inter state river have not been given due consideration. Even such projects have been planned which, if executed, would submerge large areas in the territory of adjoining states.

State Governments have been taking river waters as the property of their states and planning for harnessing them in their own ways. National interest has been put to the place of secondary importance with topmost priority for the benefits of individual states.<sup>41</sup>

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41. The Chief Minister of Madhya Pradesh, Sri Gobind Narain, said in September 1967 that he has not still applied his mind to the Narmada question, but when he does, he will first think of his state and then of the country at large. "The Narmada Dispute: A New Phase" Swarajya, XII(14), September 30, 1967, p. 29.

As a result of all this, the concerned state individually and the nation at large, have been suffering heavy losses. As the Central Government has been entrusted with the economic development of the entire country, it should play a dynamic role, especially in regard to the settlement of disputes among the various constituents of the Indian federal set up.

In the past the Union Governments has played the role of a mediator. What is now desirable is that the Central Government should not attempt the settlement of these disputes through mere mediation but should be ready to facilitate settlement by suggesting alternative schemes. Necessary loans, grants and financial assistance should be given to the states, so that the losses of the suffering states are compensated. The Irrigation Commission (1972) in its report has also recommended such a vital role for the Central Government, "Where it is necessary for the Union Government to step in, the endeavour should be to facilitate settlement by suggesting alternative schemes and by giving loans and grants or other forms of assistance to balance the scales, as was done by the World Bank in the Indus Waters Dispute."<sup>42</sup>

In the past, in some cases, speedier settlements of river waters have been attempted by setting up committees under the Central Water and Power Commission to assist the states to reach an agreement by making available reliable technical data etc. But such committees have not proved very effective. So, in their place impartial experts drawn from the Centre and states other

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42. Report of the Irrigation Commission, 1972 Vol.I.p.357

than those involved in the dispute, should be appointed on condition that the opinion of such experts will be accepted by the parties ungrudgingly.

The Government of India continues to rely on administrative procedures under which no large projects are started by the states, unless they are cleared by the Planning Commission and the Government of India. This procedure has proved very effective in fostering co-operation between the co-basin states in utilising waters of inter-State rivers. But, the same can be a source of friction between parties to the dispute, if the Union Government or the Planning Commission clears any project on inter-state river without securing agreement of other states.<sup>43</sup>

During the first few years after the enactment of the constitution of India a legislation was drafted by the Government of India to give it special powers for co-ordinating and regulating development of inter-State river waters. The drafted legislation also contained provisions under which the Central Government could issue directions to the state governments for the optimum utilisation of river waters. Discussions with the representatives of state government were held but the idea of introducing this draft legislation was abandoned by the Government

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43. In 1965 serious differences rose between the Central Government and the Government of Andhra Pradesh when some projects proposed by Maharashtra were cleared by the Union Government on the Krishna without securing agreement between the states of Andhra Pradesh and Maharashtra.

of India mainly because of financial reasons.<sup>44</sup>

The Irrigation Commission, appointed by the Government of India, recommended in its report, the formulation of a national water policy. Further, one of the most important conclusions arrived at during the deliberations at Second World Congress on water resources - 'Water For Human Needs,' held in New Delhi in December, 1975 was that water must be regarded as a national asset. Planning for water resources development has to be multi-objective and multi-disciplinary and directed towards evolving master plans on regional and national basis ignoring political boundaries and framed in the background of a clearly defined national water policy.<sup>45</sup>

Early in 1972, Dr. K.L. Rao, the Union Minister for Irrigation and Power, who initiated a move for Central control of inter-State rivers, asked the Union Law Ministry to examine the implications of legislation to give to the Centre the authority to apportion river waters among different states.<sup>46</sup>

In June 1972, the Union Minister for Planning informed the National Development Council about the decision of the Central Government to nationalise all the rivers of the land. The Parliamentary Committee of the Irrigation and Power

44. Under that draft legislation which was under consideration by the Government of India in 1950-51, provisions were made to vest in the Centre Government adequate powers for coordinating and regulating all developments on inter-State rivers for irrigation and other purposes. GULHATI (N.D.), "Development of Inter-State Rivers" op. cit. p.14

45. Bhagirath, Vol. XXIII (1) January 1976, p.35

46. Times of India, February 4, 1972.

Ministry also recommended in the same year that all the disputed rivers should be declared 'national rivers' and the Centre should take them under its own control. In January 1973, the Union Minister for Irrigation and Power again said that the Government was intending to move a bill in the Budget Session of 1973 declaring water a national resource. It was also declared by him that the State Chief Ministers were being consulted on the subject.<sup>47</sup> In 1974 the Government of India was making comprehensive plans for constituting a high power national water council. This water council, it was said, shall be an instrument in the evolution of national water policy, in guiding its implementation and resolving inter-State water disputes.<sup>48</sup> There was also a suggestion for declaring rivers as being of national importance.<sup>49</sup>

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47. Indian Express, May 16, 1973.

48. Nav Bharat Times, December 4, 1974

49. The question will be discussed in more detail later.

## CHAPTER II

### RIVER WATER DISPUTES IN INDIA

It is clear that intensive exploitation and utilisation of river waters is most essential for the development of agriculture and industry in a country like India where rainfall is inadequate and undependable. Since India's economy has been predominantly agricultural from time immemorial, the harnessing of river waters has occupied an important place in the economic development of the country.

The utilisation and control of river waters in India was begun during the British Rule when the ground work of modern irrigational system in the country was commenced. A major part of the development that took place in India before independence was in isolation from other projects and therefore there were not many river water disputes between their various users. The unchallengable authority of the British rulers didnot allow any differences over river waters to grow so important so as to pose a threat to their dominance.

All out efforts to utilise river waters on a planned basis ~~was~~ with a view to obtaining maximum benefits were made only after the attainment of independence. Considerable importance was given to the tapping of water rerources in the country. Many multipurpose river valley schemes were planned and executed on inter-state rivers. In many such schemes the co-basin states extended their full cooperation and thus obtained the maximum benefits. But in a number of cases various states didnot cooperate in the optimum utilisation of inter-State river waters and therefore the

process of development in such cases was hampered. Mr Jagjivan Ram, Union Minister for Agriculture and Irrigation, disclosed in December, 1974, that 106 projects were held-up because of disputes on inter-state rivers concerning among others, the Godavari, Narmada, Cauvery, Jamuna and Ravi Beas rivers.<sup>1</sup>

Such inter-State river water disputes are not a feature peculiar to India alone and are there in almost all countries of the world. But there is no doubt that in independent India their number has increased due to a variety of reasons. Large scale development especially in the case of rivers crossing the geographical boundaries of states gave birth to conflict of interests. Also, the rapid pace of development in primary as well as secondary sectors brought home the importance of limited water supplies to various users of river waters. With so many rivers flowing through more than one state, conflict of interests among them was bound to arise. But such inter-State disputes have to be faced in order to get the benefits from the process of federalism as these are, to some extent, the inevitable outcome of this unique form of government.

The frequent changes in the boundaries of states have also been a contributing factor for a large number of water disputes in India. As a result of the drastic changes in the territorial frontiers of various states, the number of disputes and states involved in them have gone up considerably. In 1953 the state of Andhra was formed. In 1956 came the re-organisation of states. In November 1960, the State of Bombay was spilt into Maharashtra and Gujarat. In 1966, the Punjab Reorganisation Act was passed and new state of

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1. Declaration in Lok Sabha on 3rd Dec., 74, Statesman, December 4, 1974, p.5



Haryana was created. In 1951, the State of Orissa was not a party to the agreement reached regarding the allocation of the Krishna and Godavari waters but it also came to be involved in the dispute and started pressing for its share in the waters of the said rivers after the boundaries of states underwent changes in 1956. After the passing of Reorganisation of Punjab Act, 1966, a dispute arose between Punjab and Haryana which could be solved only in March, 1976, when the Central Government gave its decision over the sharing of the Beas waters. We would now consider successively some of the major river water disputes.

(a) DISPUTES Over waters of the Indus and its tributaries:

Under the Indus system of rivers there is Indus as main river and its tributaries, the Kabul, Chenab, Ravi, Beas and the Sutlej. The rivers of this system are international in character and flow through India, Pakistan and Afghanistan.

In 1918, a dispute arose between the erstwhile States of Bhawalpur, Bikaner and the Punjab regarding the use of the Sutlej waters. The state of Bhawalpur contended that Bikaner, a non-riparian state, was not entitled to get any waters from this river. But the State of Bikaner was allowed to use a certain quantum of waters from the Sutlej when an agreement was arrived at in the best interests of the public at large irrespective of provincial or state boundaries.<sup>2</sup>

A major controversy rose again when the Punjab planned to go ahead with two new projects—Thal and Haveli alongwith Bhakra Nangal. The state of Sind complained that the supply of waters to these projects would adversely affect the supplies to its

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2. GULAHATI (N.D.), Development of Inter-State Rivers, op.Cit. P. 143.

territories and would create a serious shortage of water at its Sukkur Barrage Project.<sup>3</sup> When no agreement could be arrived at between the parties themselves, the Governor-General, in September, 1941, appointed a commission under the chairmanship of Mr Justice B.N.Rau. The commission submitted its report in July, 1942, which was unacceptable to both Punjab and Sind. No agreement could be reached upto the time the partition of India took place.

After partition, the matter became a dispute between East Punjab and West Punjab. The two governments referred the disputes to the Governments of India and Pakistan making it an international water dispute. Negotiations between the Governments of India and Pakistan didnot help in finding an end to the dispute. In 1951, World Bank offered its good offices to solve the dispute. After its untiring efforts for years together, the Indus Treaty was signed in 1960 between the two Governments.

The use, Control and distribution of the Ravi, Beas and Sutlaj were disputed after independence. The three rivers are an inter-State river system flowing through Jammu and Kashmir, Himachal Pradesh, Punjab, Haryana and Rajasthan. The waters of these rivers were given to India under the Indus Treaty, Under which Pakistan couldnot claim them after March 31, 1970 as in the meantime it was to build an alternative source of supply of water. At that time, it was decided that Rajasthan was to get 3 M.A.F., PEPSU 1.30 M.A.F. and Jammu and Kashmir .65 M.A.F. of waters

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3. GULHATI (N.D.) *ibid*, 9. 151.

from these rivers. But Punjab was split in 1966 and a new state of Haryana came into being with a 40 per cent share in the assets of the undivided state of the Punjab. Under the Punjab Reorganisation Act, the apportionment of surplus waters was to be determined by an order of the Central Government if, the successor States didnot arrive at a mutual agreement with -in two years over the sharing of Ravi, Beas Waters.<sup>4</sup>

On the basis of 40 percent share in the assets of the undivided state, Haryana claimed 4.8 M.A.F. of the 7.2 M.A.F. storage of the Ravi and Beas. This was disputed by the Punjab, and Several rounds of talks between the representatives of thw two governments didnot yield any satisfactory results. In November 1968, the Government of Haryana requested the Centre to set up a statutory counsel to arbitrate on its dispute with the Punjab in respect of Ravi and Beas waters.<sup>5</sup> Having failed in its attempt, it ultimately requested the Centre to determine the rights and liabilities of the Punjab and Haryana in the Bhakra Nangal and Beas Project.

The dispute was referred to the Central Water and Power Commission for arbitration. As it failed, the matter was placed at the disposal of Sh.K.C.Pant, the then Minister of Irrigation and Power. But he didnot succeed in bringing the States to a mutually agreeable solution and ultimately in 1975, the matter was entrusted to Sh.Jagjivan Ram. The Union Minister for Agriculture and Irrigation didnot favour the idea of giving an award and held th<sub>a</sub>t he would do so only if the two states failed to reach an amicable settlement.

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4- Section 78 (1) of the Punjab Reorganisation Act, 1966

5- Statesman, November 15, 1968.

Many rounds of discussions between the representatives of the two states didnot bear any fruit as there were no meeting grounds ( Punjab was willing to give only 0.9 M.A.F. to Haryana as its share while Haryana claimed 48 M.A.F. of waters from the Beas, Haryana contended on the grounds that the irrigation facilities available to it were inadequate and much less extensive than what the Punjab had)the two states could not find any mutually agreeable solution to the dispute and ultimately the Centre fixed their shares in the Beas waters by issuing a notification to this effect in March, 1976. According to that tward of the Government of India, the Punjab and Haryana were to share equally the Beas waters and each state was to get 3.5 MAF while .2 MAF were to go to Delhi for water supply purposes.

The nation as a whole and the riparian states in particular have incurred losses because of this dispute over Beas waters between Punjab and Haryana. The dispute prevented the state of Haryana from constructing the feeder channel which is necessary for utilising these waters for the irrigation of the arid areas of Hisar, Gurgaon and some other districts. By the decision of the Government of India the controversy regarding the allocations of the Beas waters to the States of Punjab and Haryana has been brought to an end. Now a part of Ravi waters and the whole of Beas waters will <sup>be</sup> put to productive use.

Another dispute regarding the use of Ravi waters arose in 1964, when Thein dam was planned to stop the flow of Ravi waters to Pakistan during rainy season.<sup>7</sup> The execution of the proposed project was held up because of differences between the Punjab, Himachal Pradesh, Jammu and Kashmir and Rajasthan on the sharing of costs, benefits and responsibility. A hurdle in reaching the agreement was constitutional. The Centre alone could acquire land in Jammu and Kashmir due to the State's special status.<sup>8</sup>

This particular dispute remained unresolved for about twelve years and was settled by an agreement signed between the Chief Ministers of Punjab and Jammu and Kashmir on January 17, 1976, through the intervention of the Centre. As a result of the delay in the settlement of this dispute Pakistan continued to reap benefits of waters of the Ravi which had been allotted to India under the Indus Treaty since March, 1970. Also the delay in building the Thein Dam has raised its construction cost from Rs.75 crores. By the time the work begins it is expected that the cost would go upto about 200 crores.<sup>9</sup> The agreement reached in January, 1976, has cleared the way for the Thein Dam and the Shahpurkandi Barrage.

(b) Periyar Waters Dispute:

Periyar is a river which rises in the western side of the Ghats and falls into the Arabian sea close to Cochin. A project to utilise the waters of this river was sanctioned in 1893. An agreement could be reached between the erstwhile States of Madras & Travancore in October, 1896. This agreement provided that Madras could use the waters of Periyar for Irrigation purposes only.

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7. Nav Bharat Times, January 16, 1976 p.1

8. The Thein dam would submerge about 20480 Acres of land out of which 12,500 Acres falls in Jammu & Kashmir.

9. Hindustan Times, January 21, 1976. p.5.

Around 1935, the Government of Madras proposed a scheme for hydro-electric power generation from the waters of Periyar flowing through its territory. The Government of Travancore objected to the same and the matter was sent for arbitration. The then Dewan of Travancore and a judge of the Madras High Court were appointed arbitrators. The two arbitrators differed in their awards and the matter was sent to an Umpire, Mr. Griffin, who was a retired judge of the Calcutta High Court. The Umpire in his decision supported the stand taken by Travancore and ruled that the State of Madras could use Periyar Waters for only irrigation purposes thus excluding use for hydro electric power generation.<sup>10</sup>

The only way open for the state of Madras now was to enter into negotiations with the State of Travancore. After a long series of talks an agreement was signed in May, 1970,<sup>11</sup> which vested in Madras the rights to generate hydro electric power from the Periyar waters by making payments for the electricity generated @ Rs 12/- per Kw. year so long as the units of energy generated did not exceed 350 million and @ Rs. 18/- per Kw. year for the energy generated in excess of 350 million.

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10. GULHATI (N.D.) - Development of Inter-State Rivers, op.cit. p. 131.

11. As a result of the discussions held in November, 1958, July 1960 and May, 1968 between the representatives of Kerala and Tamilnadu the agreement for the development of river waters in the Periyar basin was signed in May, 1970. Under this agreement the Government of Kerala conveyed to the Government of Tamil Nadu, the rights to use the Periyar waters flowing through its territory for power generation and other purposes.

The maximum use of waters of Periyar couldnot be made for years because of differences between Tamil Nadu and Travancore. This agreement of 1970 paved the way for the fullest use of the waters of this river. It was exemplary in the sense that it showed that serious efforts to settle the disputes by mutual compromise would be beneficial to all the states.

(c) Sone and Subarnrekha water disputes:

Sone is the principal southern tributary of the Ganga and runs through one of the worst drought-prone areas in the country.

The developments that took place before independence with regard to the harnessing of Sone's waters were not disputed by the co-basin states, because the approach adopted by the states upto that time was to construct small projects for the benefit of particular States. After independence the Bihar Government took certain steps to improve the irrigational facilities in the Sone basin. The canal system was remodelled in 1965. In 1968, it proposed high level canals on the waters of Sone.

In 1971, differences arose between the Governments of Madhya Pradesh, Uttar Pradesh and Bihar over the Bansagar Project proposed to be built on the Sone river in Madhya Pradesh for power generation alongwith the Tones valley and Irrigation in the Rewa areas. The Bihar Government feared that the existing irrigation in its areas would be adversely affected by the proposed diversion of the Sone Waters. The Government of Uttarpradesh also entered into the dispute with a view to getting waters from the proposed project for

irrigation in Mirzapur district as the said district did not have any other source of water for irrigation and the area was thus more prone to famines.

The concerned states witnessed an era of uncertainty all these years and under such political conditions a negotiated settlement on a complex issue like the distribution of waters could be hardly thought of. However, political instability came to an end in the States in 1973 after which the Central Government again started making attempts for a negotiated settlement out of Court. In the beginning it appeared that no amicable settlement could be arrived at because each state was rigid on its stand. Therefore, the Prime Minister was requested to intervene in April, 1973.<sup>12</sup>

But after several rounds of talks among the Chief Ministers of the three States an agreement could be arrived at. In September 1973, the Chief Ministers of M.P. and Bihar and the Governor of U.P. Sh. Akbar Ali Khan participated in talks in the presence of the Union Minister of Irrigation and Power, Dr. K.L. Rao. Under this agreement, which was signed in the presence of Mrs. Indira Gandhi on September 17, 1973, the proposed four MAF storage at Bansagar was to be shared by the States - Madhya Pradesh, Uttar Pradesh and Bihar, in the ratio of 2:1:1. Regarding the cost of this Project the agreement provided that its cost was to be shared approximately in the ratio of waters to be utilised by the three States.<sup>13</sup>

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12. Economic Times, April 17, 1973 p.5

13. Hindustan Times, September 18, 1973, p.1



All the three states involved in the dispute suffered heavily because of their minor differences. The feelings of narrowism came in the way of an early settlement of this dispute. A major hurdle in the way of an agreed settlement was that Orissa never wanted to allow vast fertile land in its territory to be submerged by the Kharkai Dam Project on the Subarnarekha. Had the dispute been settled earlier and the differences ironed out, the district of Mirzapur, which did not have any source of water for irrigation, could have been saved from serious droughts. An early solution of the problem could not be reached because of parochial view points of the states.

The Subarnarekha rises in Bihar and falls into the Bay of Bengal after flowing through Orissa and West Bengal. About a decade back a Subarnarekha project along with some others were planned. The Eastern Zonal Council approved the Subarnarekha project in 1965. But no major project could be taken up because of differences between the three States of Bihar, Orissa and West Bengal.

The dispute remained pending for about ten years and the proposed projects could not be implemented. But after the declaration of emergency in June 1975, the atmosphere of increased discipline and overriding priority to national interests favoured a settlement. Serious efforts were again made to settle Subarnarekha water dispute. The representatives of the three states met in Calcutta on December 12, 1975 and later on at Patna on January 5 and 6, 1976. Finally came the agreement of January 17, 1976, signed by the Chief Ministers of Bihar and Orissa. A major development that led to the

signing of this agreement was that this time Orissa agreed to extend assistance and cooperation in acquiring land in its territory that would be submerged by the Kharkai Dam Project.<sup>14</sup> An agreement is also to be signed soon with West Bengal on the Subarnarekha project.

- (d) The Narmada: The Narmada rises at Amar Kantak in Madhya Pradesh and runs for most of its 800 miles length through the state of Madhya Pradesh before emptying itself into the Gulf of Cambay. 87 per cent of its drainage area lies in Madhya Pradesh 1.5 per cent of its drainage area lies in Maharashtra while 11.5 per cent in Gujarat. Before 1947, practically no efforts were made to utilise the waters of the Narmada for irrigation, power generation and navigation.

After independence, serious differences arose between Madhya Pradesh, Maharashtra and Gujarat. With a view to solving that dispute and getting optimum utilisation of Narmada waters, a proposal to establish a Central Authority for the development of the entire Narmada Valley was under the active consideration of the Union Government in 1961. Details of financial arrangements, powers, function and mode of functioning of the proposed authority were prepared. But the idea of such authority was not executed by the Central Government.<sup>15</sup> The apparent reason for this was the State of emergency declared in the country. The volte face in the policy of the Government of India was justified on the grounds of need for economy and the priority to be given to the defence purposes in matters of engineering services. In

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14. Hindustan Times, January 18, 1976, p.6

15. Report of the Ministry of Irrigation and Power, 1962-63 p.11.

1963, again an attempt was made to settle the issues involved in the dispute. In a meeting of the Chief Ministers of the three States, a tentative agreement was reached. But the Government of Madhya Pradesh refused to ratify this agreement on the ground that its implementation would mean mortgaging the interests of the people of the State for all times to come.<sup>16</sup> For making available the necessary data to help the states to come to a solution acceptable to all the parties concerned, the Government of India constituted a Narmada Water Resources Development Committee in 1964, under the chairmanship of Dr. A.N. Khosla.<sup>17</sup> The task of preparing the best possible master plan for the utilisation of Narmada waters for irrigation, power development, flood control etc., in the most economical manner was also entrusted to this committee.<sup>18</sup>

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16. When the Chief Minister of Madhya Pradesh was asked how he had given his consent to the agreement, if, in his opinion it went against the interests of the State, he claimed that the harm, the proposed agreement was going to do to Madhya Pradesh, was discovered only after detailed technical examination by experts. National Herald, April 26, 1968.

17. Dr. A.N. Khosla obtained Civil Engineering degree from an Engineering College in Roorkee in 1916. He joined the Punjab Irrigation Department in 1916 and worked there in various capacities. In 1945 he joined the Government of India where he founded Central Waterways, Irrigation and Navigation Commission ( Now Central Water and Power Commission). He was Chairman of this Commission from 1945 to 1953.

In 1964, Dr. A.N. Khosla was appointed Chairman of a Committee of experts constituted to make recommendations with regard to various projects to be taken up in the Narmada basin. He has been President/Chairman of various engineering organisations in the country and abroad. He is the author of numerous papers and publications.

18. Report of the Ministry of Irrigation and Power, 1964-65, page 68-

The Khosla Committee submitted its recommendations in 1965. The dam at Navagam was recommended with a Full Reservoir Level 500 feet. The suggestions made by the Khosla Committee were accepted by Gujarat, but Madhya Pradesh and Maharashtra opposed them because they went against the interests of their respective States<sup>19</sup> (vast areas of land would have been submerged in Madhya Pradesh if it accepted the recommendations of the Khosla Committee).

In 1966, the Government of Gujarat submitted a memorandum to the Centre which called for the immediate establishment of the Narmada Development Authority. It suggested that the States involved in the dispute and the Central Government could hold equal shares in the proposed authority.<sup>20</sup> But this request of the Gujarat Government was not accepted by the Government of India. The Chief Ministers of Gujarat and Madhya Pradesh met at Pachmarhi in May 1967 and at New Delhi in June 1967. In the two meetings the two Chief Ministers were reported to have had frank discussions on the problem resulting in <sup>21</sup> "better appreciation of each other's problems and difficulties." But eventually the talks ended in a dead lock.

A final attempt to settle the dispute was made by the Prime Minister in 1968 but she also could not do much. Finally the Government of India constituted a tribunal to end the stalemate over the distribution of this river's waters. The

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19. The Government of Maharashtra rejected the recommendations by Khosla committee as it was interested in the Jala Sindhi hydro electric project (on which it reached an agreement with Madhya Pradesh in 1965) which would be submerged by 500 feet Navagam dam as recommended by the Khosla Committee. Hindustan Times, April 28, 1968, p.8.

20. Hindu, April 21, 1966

21. Report of the Ministry of Irrigation and Power, 1967-68, p.25.

Government of Gujarat welcomed the step taken by the Union Government while Madhya Pradesh and Maharashtra opposed it.<sup>22</sup> The two governments wanted the dispute to be settled by mutual agreement and felt that not enough time was given to the parties to resolve the dispute by negotiations.

Even after constituting the tribunal for the Narmada waters dispute the Government of India continued its efforts to find out some amicable solution to the dispute. Its attempts met with success in July 1972, when a basic agreement could be reached between Madhya Pradesh, Gujarat, Maharashtra and Rajasthan. Under this agreement the four states agreed to allocate 122 Million Cubic Metres and 160 Million Cubic Metres of the Narmada waters to Maharashtra and Rajasthan respectively.<sup>23</sup> No agreement however, could be reached concerning the height of the Navagam dam. In this meeting a decision was taken to leave the height of this dam to be decided by the Prime Minister. Since further negotiations did not prove useful, the Prime Minister did not agree to this method. The dispute thus once again was referred to the Narmada Water Disputes Tribunal for adjudication.

A great deal of harm has been done by the unnecessary prolongation of Narmada waters dispute. According to one estimate

22. Madhya Pradesh Unit of the CPI issued an appeal to the masses for an agitation against Centre's decision to refer the Narmada Waters Dispute to a tribunal, Statesman, June 14, 1969.

Madhya Pradesh Unit of Jan Sangh with a view to censuring the Centre gave a notice of motion to the state Vidhan Sabha seeking disapproval of Centre's move to refer the water dispute for arbitration, Hindustan Times, June 9, 1969.

23. Hindustan Times, July 15, 1972.

the nation is suffering a loss of Rs. 10 Lakhs a day and only this dispute has cost the nation more than Rs. 900 crores over the last 25 years.<sup>25</sup> Work on the Navagam dam has not been started to this day, though its foundation was laid by Pandit Jawaharlal Nehru in 1961. In March 1975, the Chief Ministers of Madhya Pradesh, Maharashtra and Rajasthan and adviser to the Governor of Gujarat reached an agreement with regard to the projects to be taken on the river Narmada. These talks were held under the chairmanship of Sh. Jagjivan Ram.

According to this agreement Gujarat and Madhya Pradesh were to start work on four projects each in their respective states (In terms of that agreement Gujarat was to go ahead with the construction of the Karjan, Herat, Rami and Sukhi projects while Madhya Pradesh was permitted to go ahead with work on projects at Kolar, Bichie, Sukta and Mucuna-Latia). However, this agreement was signed without prejudice to the decision of the Narmada Water Disputes Tribunal. The dispute is now being investigated by the Tribunal and its decision is expected in the near future.

- (e) The Cauvery Waters Dispute. The Cauvery rises at Tala Kaveri in the Brahmagiri range of western Ghats in Coorg district of Karnataka and joins the Bay of Bengal after flowing through Tamil Nadu.

Differences regarding the utilisation and distribution of the waters of this river arose between the British rules Madras Presidency and Princely state of Mysore in 1850. An

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25. "A Move Forward", - Times of India, July 27, 1972. The nation has been suffering a loss of food grains worth Rs. 15 crores and 1250 M.W of power because of the Narmada dispute alone, annually. Navbharat Times, Dec. 4, 1974

agreement could be arrived at in 1982 which provided that Mysore could not, without the previous consent of the Madras Government, build any reservoir on the Cauvery or any of its tributaries listed in the agreement including the Kabini, Hemavati and Horangi on which Karnataka has started projects, which are a bone of contention between the two states in the present dispute).

In 1910, the then chief Engineer of Mysore (later its Dewan) Sh. M. Visvesvaraya prepared plans for the construction of the Krishnarajasagar dam across the Cauvery. The proposed project was to be taken up in two stages. As required by the 1892 agreement, Mysore sought the consent of Madras which agreed to the first stage but objected to the second stage on the ground that it would affect the existing irrigation in its areas. Because of the differences of opinion, the matter was referred to arbitration as provided under the 1892 agreement. The arbitrator gave his award in 1914 which was not acceptable to Tamil Nadu. Although, the award was ratified by the Government of India, yet Tamil Nadu appealed to the Secretary of State against it and the implementation was suspended.<sup>26</sup>

The Secretary of State for India directed the Mysore Government to enter into fresh negotiations with Tamil Nadu. After long drawn out discussions for about ten years, an

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26. Under clause IV of the 1892 agreement it was provided that differences of opinion between the Madras and Mysore Governments shall be referred to arbitrators appointed by the Government of India and their decision shall be final and binding on the parties. For further details of the 1892 agreement, See HUSSAIN (M. BASHEER), op.cit, part II, pp. 1-17.

agreement was reached in 1924. Under the agreement Tamil Nadu was allowed to go ahead with its project at Mettur while Karnataka was allowed to proceed with its project at Krishnasagar.

After independence, certain differences arose between the states of Karnataka, Tamil Nadu and Kerala over the utilisation of waters of the Cauvery. The Government of Karnataka started work on new projects on the Hemavathi, Kabini and Harangi (the tributaries of the Cauvery) which were objected to by Tamil Nadu, Karnataka claimed that it was entitled to start with some new projects on the tributaries of the Cauvery under 1924 agreement. It contended that Tamil Nadu had already appropriated larger benefits from the Mettur and Bhavani projects and was objecting to the projects undertaken by Karnataka to offset its advantages from these new reservoirs.

In the meanwhile, the government of Karnataka appointed a technical committee to go into the problem of utilisation of the Cauvery waters. This committee submitted its report in August, 1969. Tamil Nadu feared that the committee appointed by Karnataka had urged the Government of Karnataka to go ahead with the projects with or without the consent of Tamil Nadu and with or without clearance by the Centre.<sup>27</sup> So, it requested the Centre to intervene in the dispute before it took a turn for the worse. Following repeated

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27. Indian Express, September 6, 1969, p.6  
 Since the Government of Tamilnadu had executed three projects, namely Mettur High Level Canal, Kattalai Bed Regulator and Pullambady scheme without obtaining concurrence of Karnataka, so, the committee appointed the Karnataka urged the Government of the State to go ahead with its schemes without waiting for the approval of Tamil Nadu Government. "Inter-State Water Disputes in India", New Delhi, Indian Law Institute, 1971, p.49



requests from the Government of Tamil Nadu to direct Karnataka not to proceed with the projects, the Union Government in March 1970 issued a directive to Karnataka, directing it not to proceed with the projects till the issues involved in the dispute were settled. But the Government of Karnataka turned down the proposal of the Union Government.<sup>28</sup>

Attempts were made in the meantime to bring the states to agree on a settlement but the views of the parties could not be reconciled. After futile talks, the government of Tamil Nadu started pressing hard for the immediate constitution of the Tribunal for the Cauvery dispute. In an all party meeting it was decided to observe June 27, 1971 as a day of protest against the "unwarranted" delay caused by the Union Government regarding the setting up of a tribunal.<sup>29</sup> The DMK controlled state government, in a resolution passed in July 1971, requested the Centre to refer the dispute to arbitration. The resolution said that any further delay would have the unfortunate and undesirable effect of helping the Government of Karnataka to proceed and complete its projects placing the irrigational interests of Tamil Nadu in serious jeopardy. Forty Members of Parliament from Tamil Nadu marched in a silent procession to the residence of the Prime Minister on July 2, 1971, demanding the immediate reference of the dispute to a tribunal. They presented a memorandum also to the Prime Minister to this effect.<sup>30</sup> But Prime Minister turned down Tamil Nadu's demand for referring the dispute to a tribunal.

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28. Times of India, March 6, 1970

29. Swarajya, August 7, 1971, page 22

30. Times of India, July 3, 1971, p.6

Mrs. Gandhi drew Mr. Karunanidhi's attention to the fact that Karnataka was under President's Rule. She said, "when there is no popular Government in Karnataka, it would not be proper to take any step committing the Karnataka Government".<sup>31</sup>

The Government of Tamil Nadu filed a suit in the Supreme Court in August 1971, seeking a declaration to the effect that a dispute has arisen and it is the duty of the Central Government to constitute a tribunal to settle the dispute. It also sought an ex-parte injunction to stay Karnataka from going ahead with its irrigation projects upstream of the Cauvery.<sup>32</sup> Later on the Government of Kerala also filed a suit seeking similar declaration for referring the matter to a tribunal. The Karnataka Government also entered a caveat before the Supreme Court to enable it to put forward arguments in support of the stand taken by it.

In 1971 the Chief Ministers of the three states met in New Delhi and it was agreed upon between them to appoint a fact finding committee to collect all the data pertaining to the Cauvery waters. After this committee submitted its report in December, 1972, the Chief Ministers of Karnataka, Tamilnadu and Kerala again requested the Union Government to make a detailed study of the water requirements of various projects in execution as well as as projects planned by the states. These studies and subsequent discussions at technical level were completed in July, 1974.<sup>33</sup>

The efforts of the Central Government to convince the

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31. Asian Recorder, August 13-19, 1971 p. 10310

32. above cited p. 10322

33. Report of the Ministry of Irrigation and Power, 1974-75. p.35.

states of the desirability to make reasonable adjustments in their inflated claims did not make much impact on the three states. The valuable data collected by the two committees appointed by the Central Government also could not help them much in reaching an agreement among themselves.

In October 1974, the Government of Tamil Nadu again urged the Central Government to refer the Cauvery waters dispute to a tribunal. It requested the Centre to intervene immediately and secure the release of the waters impounded by Karnataka in Kabini reservoir which should have otherwise, flowed into Tamil Nadu.<sup>34</sup> It wanted the issues involved in the Cauvery dispute to be solved at the earliest because it was proposing to modernise the Tanjore Delta irrigation scheme by constructing a grand Anikat, a scheme in which the World Bank has also shown some interest. Kerala Government also showed her interest in an early settlement because it proposed to build Kakkadaril irrigation project in Cannanore. Karnataka also favoured an early settlement because it was planning reservoirs on Hemavathi, Harangi, Kabini and Savarnavati tributaries of the Cauvery in its State.

Under these changed situations, an end of the long standing dispute appeared at hand in November 1974, when the Chief Ministers of Karnataka, Tamil Nadu and Kerala agreed to the establishment of Cauvery Valley Authority more or less on the lines of the Tennessee Valley Authority in the United States. The proposed Authority was to comprise of technical experts from the three states and was to be headed by a Union Official.<sup>35</sup>

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34. Statesman, November 29, 1974.

35. Hindustan Times, November 30, 1974 p.1

But there arose differences over the draft of the proposed agreement which could not be reconciled and the three Chief Ministers left New Delhi without signing the draft agreement. The Chief Minister of Tamil Nadu said in Madras that "Certain Problems have arisen in the finalization of the draft."<sup>36</sup> But it is believed that the agreement could not be signed because Kerala had misgivings about an implied bar on its diverting Kabinl waters west wards for power generation. Sh. Karunanidhi did not favour signing the agreement to consider the waters Tamil Nadu would have to surrender. They met again in New Delhi in February, 1975, but failed to reach an agreement. Two new drafts were presented by Kerala and Karnataka at the meeting but no agreement could be reached because of differences among the Chief Ministers on the quantity of waters to be shared among the States. Another hurdle was the stand taken by the Chief Minister of Kerala, Sh. Achutya Memon, who urged that the question of 'what is economic use of water in any state' should be decided not by the proposed authority but by the concerned states themselves.<sup>37</sup>

Tamil Nadu Chief Minister Sh. Karunanidhi wanted an early settlement of the dispute so as to enable the state Government to save Thanjavur Delta from turning into a dust bowl.<sup>38</sup> A settlement of the Cauvery dispute had acquired urgency also because the 50 year agreement of 1924, which

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36. Statesman, December 1, 1974, p.1.

37. Hindustan Times, February 16, 1976, p.1

38. Statesman, November 29, 1974

regulated the distribution of the waters of this river, was due for revision in 1975. Karnataka particularly wanted the basis of the water distribution of 1924 agreement to be revised in its favour. The increased spirit of mutual accommodation witnessed among the States after the declaration of national emergency in June 1975 also paved the way for a settlement. A climate conducive to some agreement was created by the ousting of the D.M.K. controlled government from Tamil Nadu. The long standing dispute on the sharing of the Cauvery waters was settled in August 1976.<sup>39</sup> According to the agreement a committee of representatives of the three States and the Central Government was to be constituted immediately to work out the manner of sharing the available waters in lean years. The task of working out quantities of surplus waters to be made available to the concerned states was also entrusted to this committee. The report of the Committee was to be submitted within three months for consideration at the next meeting of the Chief Ministers.

The three states also agreed to the constitution of a Cauvery Valley Authority comprising of one irrigation engineer from each of the three states and would be presided over by an engineer nominated by the Union Government. The functions and rules of procedure of the proposed Authority is being drafted by a Committee of the Secretaries of the three States.

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39. Hindustan Times, August 27, 1976 p.1 Also see "The Cauvery Accord", Hindustan Times, August 30, 1976 p.7

(f) The Krishna Waters Dispute. The Krishna rises in the western Ghats and joins the Bay of Bengal after flowing through Karnataka and Andhra Pradesh.

Before independence most of the projects undertaken on the Krishna river were isolated works without much regard for projects in other states. So, no major differences rose between different states with regard to the waters of this river.

The controversy over the use and allocation of the Krishna waters began in 1951, when at the instance of the Planning Commission, an inter-State conference was held at which an agreement was reached. The agreement provided for the allocations of the Krishna waters among the then states of Madras, Hyderabad, Mysore and Bombay.

After the agreement of 1951, many new developments took place in the political boundaries of various states. In 1953, the Andhra Act was passed under which Madras was split into Andhra and Madras. As a result of this, part of the Krishna waters which lay in Madras before 1953, now came to lie in the territorial limits of various states. A few years later the state of Bombay was split into Maharashtra and Gujarat. As a result of these developments, the accord of 1951 lost its validity and it became necessary to make adjustments in the river waters allocations made to various states under it.

Almost all the new emerging states demanded reallocation of the waters of the Krishna. Karnataka, Maharashtra and Madhya Pradesh wanted a de-novo consideration of the entire issue concerning the allocation of the waters. Andhra Pradesh did not favour this demand made by the other three states and wanted that the 1951 agreement should remain in operation

for its prescribed period of 25 years.<sup>40</sup>

The Government of India left the matter to the new emerging States and wanted that they should themselves reach some amicable settlement. In 1960 an inter-State conference was also convened in New Delhi, but the attempts made by the centre did not bear fruit. Ultimately, the Government of India constituted a commission (Gulhati Commission) to review the supplies of the Krishna ( and Godavari) waters. The Commission submitted its report in 1962 in which it made several recommendations.

The report of the Gulhati Commission was forwarded to all the concerned states. An attempt was now made by the Union Government to make the states reach some amicable settlement among themselves. After the failure of negotiations, the Union Minister for Irrigation and Power in March, 1963 laid a statement on the table of the Lok Sabha in which tentative allocations of the Krishna waters were made among the states of Maharashtra, Karnataka and Andhra Pradesh.<sup>41</sup> The scheme of things outlined by the Union Minister was, however, not acceptable to any of the State Governments involved in the dispute.

In the meanwhile, the Central Government cleared some projects proposed by the Government of Maharashtra which were strongly opposed by the Government of Andhra Pradesh on the grounds that they needed more waters than were provided

40. Andhra Pradesh was in favour of continuing the 1951 agreement with slight modifications because it had lost the least. Link, vol. 9 (51), July 30, 1967, pages 19.

41. GULHATI (N.D.), "Development of Inter-State Rivers", op.cit., p.194.

for Maharashtra under the 1951 agreement. Attempts were continued by the Union Government to arrive at a harmonious agreement between various parties. As no state was willing to scale down its highly exaggerated demands, no agreement could be reached even after several rounds of talks. In March 1968, the Government of Maharashtra threatened to boycott the talks if no early settlement of the dispute could be arrived at.<sup>42</sup> The Karnataka Government also expressed its unhappiness over the futile talks and discussions and handed over the dispute to the Advocate General of the State.<sup>43</sup> Because the negotiations were not leading the States any closer to a settlement, the Government of Andhra Pradesh, which had hitherto been against referring the dispute to a tribunal, now agreed to this demand.

In January 1969, the Union Minister for Irrigation and Power said that the Central Government would resort to constitutional methods to settle the disputes if its present efforts to solve them by Gandhian methods failed.<sup>44</sup> A final attempt to settle the dispute by negotiations was made in April, 1969, when the Deputy Prime Minister Shri Morarji Desai agreed to mediate in the dispute. But his discussions

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42. Free Press Journal, March 12, 1968.

43. The Chief Minister of Karnataka said in the State Assembly "We are tired of talks and negotiations, therefore, the question of any further talks or negotiations has ceased to exist" - Free Press Journal, March 22, 1968.

44. Patriot, January 29, 1969.



with the Chief Ministers of Andhra Pradesh, Karnataka and Maharashtra also did not lead to reconciliation of their view points. On April 17, 1969, the Prime Minister decided to refer the dispute to arbitration, to avoid further bickering among the contending states.

In the beginning a decision was taken to set up one tribunal for both the rivers Krishna and Godavari. The Governments of Karnataka and Maharashtra favoured the idea because they wanted the dispute to be solved in its totality and not in isolation. But Andhra Pradesh insisted on setting up two tribunals since two rivers were involved. Ultimately the matter was referred to the Union Law Ministry which recommended that two tribunals with common members and Chairman should be set up. As a result, the Krishna Water Disputes Tribunal was constituted with Sri Justice R.S. Bachawat as its chairman and two other judges as members.<sup>45</sup>

After investigating the issues involved in the dispute for about 4 years the Krishna Water Disputes Tribunal submitted its report to the Union Government in December, 1973. The Government of Karnataka, Andhra Pradesh, Maharashtra and the Central Government sought some clarification/guidance on certain matters which were not originally referred to the Tribunal. The Tribunal was obliged to entertain such requests from the parties to the dispute under section 5(3) of the Inter-State Water Disputes Act, 1956. Arguments on

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45. The Krishna Water Disputes Tribunal was constituted by the Government of India by notification on April 10, 1969, issued under section 4 of the Inter-State Water Disputes Act, 1956 (33 of 1956). Shri Justice, R.S. Bachawat was appointed its chairman and Shri Justice Shamsher Bahadur and D.M. Bhandari as its members. See Gazette of India Extra-ordinary, Part-II, page 3, sub-sec (ii) dated April 10, 1969.

the matters on which clarification and/or guidance was sought by the states were completed by the Tribunal in the early months of 1976.

The Krishna Water Disputes Tribunal gave its final decision on the claims of Maharashtra, Karnataka and Andhra Pradesh about sharing the Krishna Waters on May 27, 1976. For fuller and better utilisation of the waters of this river the Tribunal suggested the constitution of an inter-State administrative authority to be known as the Krishna Valley Authority. The proposed authority would have representatives from the three States and the Centre on it and will decide the manner in which the extra flow of water other than 2060 TMC (thousand Million Cubic Feet) shall be utilised by the states concerned. In case the total supply is less than 2060 thousand Million Cubic Feet this body would decide the manner in which the deficit waters are to be shared by the States.<sup>46</sup>

- (g) The Godavari Waters Dispute. The Godavari rises in the Nasik district of Maharashtra and after flowing through Maharashtra and Andhra Pradesh falls in the Bay of Bengal. It is the largest of the east flowing rivers with its catchment areas in Maharashtra, Madhya Pradesh, Karnataka, Orissa and Andhra Pradesh.

Before independence not much was done in the direction of harnessing the vast potential of this river. The approach adopted was to plan and execute small projects within the territorial limits of a particular states which affected the water supplies in the other states the least. Also, the

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46. Hindustan Times, June 1, 1976 p.4

quantity of water in this river was very large and the states were not in a position to enable to use all of it. Therefore, no major differences of opinion arose between the various constituents of British India concerning allocation, utilisation and control of the Godavari waters.<sup>47</sup>

In 1944, tripartite discussions took place between the then states of Mysore, Hyderabad and Madras Presidency in which the residual supply available was determined and assigned to the three states.

The first attempt to harness the waters of this river in independent India was made in 1951, when an assessment of the supplies available in the river was carried out. The water requirements of projects then in operation and further possible uses in the light of proposed new projects were studied. An inter-State conference was convened by the Planning Commission in the same year in which an agreement was signed between the states of Bombay, Hyderabad, Mysore and Madras regarding the allocation of water supplies from the Godavari.

With the signing of the 1951 agreement started an era of major changes in the political boundaries of States. In 1953, the Andhra State Act was passed which gave birth to a new state of Andhra in southern India. In 1956, new territorial limits of various states came into being with the passing of the reorganisation of States Act. In 1960, the state

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47. However, in 1933 differences arose between Madras and Mysore over the Tungbhadra - a tributary of the Godavari which were resolved by an agreement between the two states in 1938.

of Bombay, as reorganised in 1956, was split into Maharashtra and Gujarat.

In view of the changed political situation, a review and modification of the agreement entered into by States in 1951 became essential with regard, to the works in operation, under construction and contemplated in different regions. Newly emerged states Maharashtra and Gujarat came out with a demand for making readjustments in regard to the distribution of waters of the river and finances allocated for various projects taken thereon. The Union Government wanted the states to reach some agreement among themselves on the basis of the data available with it.

However, no agreement would be reached. One of the important factors responsible for this was that economic development had brought home to the governments of states the importance of increasing use of river waters.<sup>48</sup> They started putting demands far in excess of their actual requirements. Their claims were so exaggerated that they far exceeded the total availability of the waters in the Godavari (and Krishna) basin.

To seek an end to the dispute, the Government of India, in May 1961, appointed a three member commission (Gulhati

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48. Before 1951, hardly 2 per cent of the waters of the Krishna and Godavari was utilised. So every state was liberal in its attitude towards the allocation of the river waters. But by the end of second five year plan the percentage of the utilised waters of the two rivers went upto 20 which made states adamant in their attitudes towards the allocation of the waters of the two rivers. CHATURVEDI (B.N.) "Godavari Krishna Waters Dispute", Secundrabad, Deccan Geographer Vol.V (1-2), Jan-Dec, 1967 p.31.

Commission).<sup>49</sup> This commission was required to report on the water requirements of various projects then in execution and new ones proposed. In August 1962, the Commission submitted its recommendations which were forwarded to all the concerned states with a view to helping them to reach some amicable settlement, but in vain.

On the basis of recommendations made by the Commission the Union Minister for Irrigation and Power, Sh. Hafiz Mohammad Ibrahim, made a statement on the Lok Sabha on 23rd March 1963. In that statement allocation of Godavari waters was made among the concerned states. However, the scheme of allocation did not find favour with the three states of Karnataka, Maharashtra and Andhra Pradesh. Some new projects were cleared during these negotiations but no early end to the dispute was in sight. The Maharashtra Government even went to the extent of warning the Centre of settle the dispute by October 31, 1967 and wanted the dispute to be referred to a tribunal after that period. In April 1968, the Prime Minister wrote letters to the Chief Ministers of the concerned states suggesting them to reach some amicable settlement and avoid time consuming process of arbitration. But no progress was reported in the talks. Ultimately, the Government of India, by a notification in April 1968, set up a common tribunal for the Krishna and Godavari disputes.

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49. Dr. N.D. Gulhati was leader of the Indian delegation which negotiated the Indus waters treaty with Pakistan in 1960. He was chairman of the Krishna Godavari Commission and additional secretary to the Government of India. He was founder secretary General (1950-57) of the International Commission on Irrigation and Drainage, later its vice-President (1957-60) and President (1960-63). He is the author of many papers, articles and books.

It was agreed by the parties to the dispute that the Godavari question would be taken up by the Tribunal after submitting its final report in the case of Krishna dispute.<sup>51</sup>

In the meantime the Chief Ministers of Madhya Pradesh, Maharashtra, Orissa and Andhra Pradesh signed an agreement for the utilisation of a portion of the Godavari waters for irrigation purposes in July 1975.<sup>52</sup> A number of projects were cleared. Later on, the Chief Ministers of Andhra Pradesh and Karnataka signed a stop gap agreement in September, 1975 to proceed with three projects in the Godavari river basin.<sup>53</sup> In October 1975, the Chief Ministers of Maharashtra and Andhra Pradesh met in Hyderabad and signed an agreement on the clearance of some projects and the use of a portion of the Godavari waters and its tributaries. On December 9, 1975, the Chief Ministers of Orissa and Madhya Pradesh signed an intermediate agreement on the sharing of the Godavari waters.<sup>54</sup>

However, a major part of the controversy on sharing the waters of the Godavari was resolved in December 1975, when an agreement was arrived at between the Chief Ministers of Maharashtra, Karnataka, Madhya Pradesh, Orissa and Andhra Pradesh. This agreement covered various irrigation and

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50. Shri Justice R.S. Bhachawat was its Chairman, The two other members were Shri Justice Shamsheer Bahadur and D.M. Bhandari.
51. Krishna Tribunal submitted its final award to the Government of India on May 27, 1976 and has now started with the Godavari waters dispute, Stateeman, June 1, '76 p.1
52. Hindu, July 25, 1975.
53. Indian Express, September 17, 1975
54. Hindustan Times, December 19, 1975 p.1.

power projects which needed 2,300 Thousand Million Cubic Feet of waters against the total basin reservoir of 3,000 TMC. The States concerned signed this agreement on the understanding that it would not prejudice their claims before the Godavari Waters Tribunal.<sup>55</sup> As the agreement reached among the states did not settle all the issues involved in the dispute, the Godavari Water Disputes Tribunal will be required to go ahead with the dispute over some projects and the distribution of remaining 700 TMC of waters.<sup>56</sup>

The Godavari waters accord reflected the cooperative approach adopted by the States who wisely decided to settle the major issues in dispute through bilateral talks rather than through long drawn out arbitration.

Before the agreement of December 1975, almost the whole of the Godavari waters, estimated at about 3,000 TMC was flowing into the sea unharnessed except for some 800 TMC. The dispute among the states related to the quantum of waters to which each state was entitled and since no agreement was forthcoming for about 13 years, no state was in a position to finalise its respective reservoirs and irrigation projects. A total of 51 irrigation and flood control schemes in the Godavari basin were pending since the early sixties. The agreement of December, 1975, has eased the position to a considerable extent and the states are now free to proceed with their respective projects and make the best use of the Godavari waters.

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55. The functioning of this tribunal is examined in greater detail in Chapter III

56. Hindustan Times, December 19, 1975 p.1

## Chapter III

### WATER DISPUTES TRIBUNALS

In a federation, conflicts between the Union and the states and among the states themselves are almost inevitable. However, in all federal constitutions provisions are made to avoid them as far as possible, failing which mechanisms for conflict resolution are provided.

In the case of India, functional tension areas such as policy concerning food, industrial location, language, borders and waters are areas of inter-state conflicts. The Central Government plays more or less the role of an arbitrator. Of all these inter-states water disputes have proved particularly difficult to resolve.

The discussions held in the Constituent Assembly leave no doubt that the founding fathers were cautious about differences over the use of inter-state rivers. Yet, they did not incorporate many provisions in this regard, leaving room for the Central Government to deal with the situation as and when it arose.

In 1955, the Government of India introduced in Parliament two Bills on this subject i.e. the Inter-State Water Disputes Bill and the River Boards Bill. Both these Bills were passed in 1956 and provided government with the machinery which it required for dealing effectively with inter-state river water disputes. Under section 4 of the Inter-State Water Disputes Act, 1956, there is a provision for reference of disputes relating to waters <sup>of</sup> inter-state rivers and river valleys for adjudication to tribunals.

#### Constitution and working of Tribunals:

The Inter-State Water Disputes Act of 1956 provides that the tribunal shall consist of a chairman and two other members nominated in this behalf by the Chief Justice of India from among



persons who, at the time of such nomination are judges of the Supreme Court or of a High Court. <sup>1</sup> Necessary conditions for the constitution of a Tribunal under section 4 (1) of the Inter-State Water Disputes Act, 1956 are:

- i) receipt of a request by the Centre from any state government under Section 3 that a water dispute has arisen with another state government, which it wants to be referred to a tribunal for adjudication, and,
- ii) opinion of the Central Government that the water dispute can not be settled by negotiations among the concerned states.

It must be pointed out here that the Union Government is not obliged to constitute a tribunal merely after a request has been made by a State Government to this effect. <sup>2</sup> It is in fact empowered to make an attempt to settle the dispute by negotiation and no state can compel it for the immediate reference of the dispute for adjudication to a tribunal on the grounds that the settlement by negotiations has already been unsuccessfully attempted.

The settlement of river water disputes by negotiations is obviously ideal to resolve these problems, but it does not mean that the Central Government may keep any water dispute pending for years together without seriously attempting its settlement by negotiations. It is in the best interests of the States concerned and the country at large that a water disputes tribunal should be constituted by the Centre as soon as it be-

1. Section 4 (2)

2. After the Reorganisation of States in 1956, differences rose among the States of Andhra Pradesh, Karnataka and Maharashtra over the utilisation and distribution of the waters of the Krishna. Despite several requests by the Governments of Karnataka and Maharashtra all these years the Krishna water Disputes Tribunal was constituted by the Government of India only in 1969.

comes clear that further negotiations are not likely to yield fruitful results. In the past the Centre has kept pending many water disputes on the grounds of exploring the possibility of a negotiated settlement and the country has suffered losses because of inaction on the part of the Central Government in this regard.<sup>3</sup> Such a delay has not been costly in economic terms but even more so, in the resulting aggravation of parochial feelings. What is now needed is a time limit for the settlement by negotiations. The Administrative Reforms Commission, in its report on Centre-State Relations has recommended that a time limit of three years should be prescribed for settlement by mediation of any inter-state water dispute and on the expiry of that time limit the dispute should be referred to a tribunal for compulsory arbitration.

This was one of the most important recommendations made by the ARC in the direction of streamlining mechanisms of conflict resolution and finding an early end to the inter-state rivalries over river waters and much could be said in its favour. However, the Central Government has rejected it on the grounds that it would not be feasible to prescribe any such time limit.<sup>4</sup>

After a tribunal has been constituted the Central Government refers the water dispute to it for adjudication. It can refer any matter which it thinks is connected with the water dispute or is relevant to it. When a water dispute has been referred to the Tribunal it shall investigate the matter and

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3. The inaction on the part of the Union Government has created a crisis in Centre-State relations more than once and State Governments have filed suits in the Supreme Court for reference of the dispute to Tribunals. For example the Government of Tamil Nadu on August 4, 1971 filed a suit in this regard with the Supreme Court for constituting a tribunal to settle the Cauvery waters dispute. Kerala also filed a similar suit later on.

4. Amrit Bazar Patrika, April 14, 1975

forward to the Central Government a report setting out the facts as found by it. In the report it gives its findings and decisions on the matters referred to it.

For conducting investigations the Tribunal has the powers of summoning and enforcing the attendance of any person before it. It directs the States Governments which are parties to the dispute to present their cases before it. It is free to make on the spot enquiries with regard to the locations of projects, flow of waters, etc.

#### Implementation of Tribunal Awards

After making its investigations the Tribunal forwards a report to the Central Government which is sent to all the State Governments parties to the dispute. The Central Government and the state governments are entitled to seek further clarifications and/or guidance on certain issues. The Tribunal on receiving these queries may forward another report giving such explanations and/or guidance as it deems fit.<sup>5</sup> Once the decision of the Tribunal is published in the official Gazette it becomes final and binding on the parties who are bound to implement it.

The problem that may arise is, that a state government against whom the award goes, may refuse the implementation of the award on its part. Similar difficulty was encountered in the case of the Krishna Water Dispute Tribunal's award. In August 1974, when the hearings on the matters referred to the Tribunal for clarification and guidance were going on Karnataka

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5. Section 5 (3) of the Inter-State Water Disputes Act.

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boycotted the meeting. The official representative of this state went out of the proceedings saying that Karnataka did not hope to get justice at the hands of the Tribunal and would not be taking part in its future proceedings.<sup>6</sup> The government of Karnataka was however persuaded by the Centre to go back to the Tribunal. In this way the Central Government overcame a situation which could otherwise have led to dangerous consequences.

For avoiding such cases in future, the Inter-State Water Disputes Act, 1956, needs to be suitably amended. The terms of the reference to the tribunal should also include matters relating to the implementation of the decision of the tribunal. The tribunal should not be dissolved by the Central Government after it has submitted its report but should remain alive until all the issues, including those relating to the implementation of its award, are also settled.

#### Tribunals constituted under the Water Disputes Act

The Government of India has constituted three water disputes Tribunals so far. They are:

- a) The Narmada Water Disputes Tribunal
- b) The Godavari Water Disputes Tribunal
- c) The Krishna Water Disputes Tribunal
- a) The Narmada Water Disputes Tribunal. The Narmada is perhaps the only one among the major rivers in our country which has remained practically unexploited for irrigation and power generation purposes. Its water resources are larger than the

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6. Hindu, August 31, 1974

those of the Ravi, Sutlej and Beas put together. It rises at Amarkantak in Madhya Pradesh and, after flowing through this state, forms the boundary between Madhya Pradesh and Maharashtra and Madhya Pradesh and Gujarat before falling into the Arabian Sea.

After Independence the Government of Madhya Pradesh and Bombay requested the Central Water and Power Commission for preliminary investigations for planning multipurpose projects in the Narmada basin. An ad hoc committee was appointed by the Government of India, which in its report drew the attention of the Union Government to the great potential of development in the river. Surveys for projects and reservoirs of the Narmada waters were conducted in 1948 but no major developments could take place in the absence of an agreement between the beneficiary states.<sup>7</sup> In 1963, a dispute arose between Madhya Pradesh and Gujarat over the Navagam dam which Dr. K.L. Rao, Union Minister for Irrigation and Power proposed with its height at 425 feet.<sup>8</sup> In that year, an attempt was made to settle the issues involved in the dispute at a meeting of the Chief Ministers of Gujarat and Madhya Pradesh and a tentative agreement was also reached. But Madhya Pradesh Government refused to ratify this agreement. After the failure of negotiations, the Government of India appointed the Narmada Water Resources Development Committee in September 1964, under the Chairmanship of Dr. A.N. Khosla. The Committee was required to put forth the best possible master

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7. None of the 13 projects drawn up in 1947-48 has made progress so far because of controversy over the development of the waters of the river. Hindu, January 6, 1968.

8. Organiser, September 2, 1972 p. 13.

plan for the utilisation of the Narmada waters.

The Committee submitted its report in 1965, in which it recommended some projects for Madhya Pradesh and a higher dam at Navagam in Gujarat. The recommendations of the Khosla Committee were not acceptable to Madhya Pradesh. Its main objection was that the increased height of the Navagam dam would mean less water for Madhya Pradesh which would result in lack of irrigation facilities for it. Also about 94,500 acres of cultivable land was to be submerged in Madhya Pradesh, if it accepted the Khosla award. It wanted that top priority should be given to irrigational requirements and not to power generation, the demands for which could be met from other sources. It, however, favoured its own scheme of getting the optimum benefits from the Narmada waters with three dams at Harinfal, Jalasindhi and Navagam - the last one with lower height. The Government of Gujarat however fully endorsed the Khosla award and wanted it to be implemented.<sup>9</sup>

In April 1965, an agreement was signed between Madhya Pradesh and Maharashtra for the joint development of hydro-electric power project at Jalasindhi. But no progress took place in talks between Madhya Pradesh and Gujarat as differences between the two States regarding the height of Navagam Dam project could not be ironed out. In July 1968, the Government of Gujarat requested the Central Government to set up a tribunal under-section 4 of the Inter-State Water Disputes Act, 1956, for the adjudication of the dispute. But the Union Government wanted an amicable settlement of the dispute and continued its

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9. Tribune, June 26, 1972.

efforts to reconcile the views of the two Governments without much success.<sup>10</sup> The Chief Minister of Madhya Pradesh even accused the then Union Irrigation Minister Dr. K.L. Rao of partial treatment in the affairs of the river waters.<sup>11</sup> In September 1969, the Government of Rajasthan in a letter to the Central Government requested that a tribunal be constituted.

In October 1969, the Government of India, by a notification constituted Narmada Waters Dispute Tribunal and referred the dispute to it. The Tribunal had the following Chairman and members nominated in this behalf by the Chief Justice of India,<sup>12</sup>

1. Shri Justice V. Rama Swami ; Judge of the Supreme Court -  
Chairman.
2. Shri Justice V.P. Gopalan Nambiar ; Justice of the Kerala  
High Court - Member
3. Shri Justice G.D. Mathur ; Judge of the Allahabad High  
Court - Member.<sup>13</sup>

As Madhya Pradesh was not in favour of the dispute being referred to a tribunal, it filed a Demurrer before the tribunal alleging that the decision taken by the Government of India in constituting the tribunal was ultravires.<sup>14</sup> Threats of launching Telengana type agitation were given by MP's from the state to express their displeasure with the step taken by the Union Government.

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10. In April 1969, the official representatives of Madhya Pradesh Government walked out from a meeting with their counterparts in New Delhi. Times of India, April 14, 1969
  11. Hindustan Times, April 13, 1969.
  12. Report of the Ministry of Irrigation and Power, 1969-70, p.84.
  13. Shri Justice E. Vankatesan took charge in place of Justice G.D. Mathur as Member. However, Shri Justice Venkatesan also resigned from the Tribunal in November 1974.
  14. Amrit Bazar Patrika, January 12, 1970.

The Tribunal went ahead with its proceedings and gave decisions on certain preliminary issues pertaining to law in February, 1972.<sup>15</sup> These decisions were not acceptable to Madhya Pradesh and Gujarat so the two State Governments filed appeals before the Supreme Court and obtained stay order. The Supreme Court, however, permitted the Tribunal to proceed with inspection and discovery of documents.

The era of political uncertainty in the concerned states came to an end in 1972 with which an atmosphere, conducive to an negotiated settlement was created. Although the matter was before the Narmada Tribunal, these states urged that they should go for minimum programme for the development of some of the backward areas and meet some urgent needs pending the decision of the tribunal. Chief Ministers of Gujarat and Madhya Pradesh through direct negotiations, came to an understanding in June 1972. Both of them, alongwith the Chief Minister of Rajasthan again met in New Delhi in August 1972 and signed an agreement in the presence of the Prime Minister. This agreement provided for 0.5 and 0.25 MAF of waters for Rajasthan and Maharashtra respectively from the Narmada. No agreement could be arrived regarding the height of Navagam dam. The Prime Minister was requested to give her decision on this issue. All the four states decided to abide by her decision. Further, the four Chief Ministers, in principle decided to withdraw the dispute over Narmada waters from the tribunal before which it had been languishing since 1969.<sup>16</sup>

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15. Report of the Ministry of Agriculture and Irrigation, 1974-75, p. 33.

16. Asian Recorder, August 1972, O. 10912.



The Prime Minister was to give her award before August 15, 1972, after taking into consideration the technical and other aspects for fixing the height of the Navagam Dam. The Prime Minister asked the Chief Ministers of Gujarat and Madhya Pradesh to hold discussions with each other and report the results to her so as to enable her to know their views on the issues involved in the dispute, especially the heights of the dam.<sup>17</sup> But she did not give her decision because there was no 'popular government' in Gujarat. The changed political situation in this state made the settlement of this dispute even more difficult. As a result of all these developments no progress took place in this regard from July 1972 to July 1974. The Chief Ministers of Gujarat, Maharashtra, Madhya Pradesh and Rajasthan met again and agreed that the question of allocation of waters between Gujarat and Madhya Pradesh and the height of the Navagam dam should be referred back to the Narmada water Disputes Tribunal for adjudication. The matter was, thus, again, sent back to the Tribunal after a lapse of two years.<sup>18</sup>

The share of Madhya Pradesh in the Narmada waters was decided by the Tribunal in February 1975 and what remained to be decided was the height of the Navagam dam.<sup>19</sup> In March 1975, an agreement on some issues was reached among the states of Gujarat, Madhya Pradesh, Rajasthan and Maharashtra. With the signing of the agreement, construction of eight projects utilising the Narmada waters could be taken up. This agreement was signed

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17. Times of India, August 12, 1973

18. Statesman, April 1, 1974

19. National Herald, February 26, 1975. Proceedings before the Tribunal are in progress and its report has not been finalised.

by the parties to the dispute without prejudicing their claims before the Narmada Tribunal.<sup>20</sup>

One of the factors which has delayed the award is due to the difficulties arising from the lack of reliable data. Both the States have exaggerated claims and are not inclined to accommodate each other. The State of Madhya Pradesh wants the height of Navagam dam to be 210 feet while Gujarat is in favour of fixing its height at 500 feet (as was recommended by the Khoḷla Committee in 1965). Another point of dispute is that the Government of Madhya Pradesh wants to build three separate dams which would confine a bulk of benefits to their state and is not in favour of a big project at Navagam. Gujarat, on the other hand, wants the setting of a Narmada Development Authority with the Centre and the two states holding equal shares in the control of the projects.

(b) The Godavari Water Disputes Tribunal. The Godavari is one of the major rivers of India and offers a large scope for harnessing her waters for irrigation and power generation purposes.

Before independence there was little development of the Godavari basin and most of the exploitations were self contained isolated units. The first co-ordinated attempt in this direction was made in 1951, when the Planning Commission called a meeting of the representatives of Bombay, Hyderabad, Mysore and Madras. In this conference, an assessment of the water supplies available in the river after meeting the requirements of the works then in operation and of further possible uses, in the light of the known new projects, was made. An agreement was reached at the conference regarding the allocation of the Godavari (and Krishna) waters between different states. The

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20. Asian Recorder, May 13, 1975, p. 12569

agreement was ratified by all the States except Mysore.

Consequent on the creation of Andhra Pradesh in 1953 and subsequent reorganisation of States in 1956, areas and sites of several projects got transferred from the jurisdiction of one state to that of another. The territories of the erstwhile state of Hyderabad were distributed between the three states of Maharashtra, Karnataka and Andhra Pradesh. As the boundaries of the signatory states to the agreement of 1951 underwent drastic changes, there was a demand for the revision of the allocations made in 1951, so as to bring them up to date with regard to the changed situations and the redistribution of finances provided for those projects.

The Central Government directed the new states to arrive at fresh agreements regarding the allocation of river waters among themselves, but the states failed to reach any agreement. An inter-State conference of State Ministers was convened in September 1960, but no settlement could then be reached. In 1961, the Government of India appointed a three member commission headed by Sh. N.D. Gulhati to report on the availability of supplies in the Godavari (and Krishna) and assess the water requirements of various projects on this river. The commission was also given the task of studying the possibility of diverting the Godavari waters into the Krishna basin.

The Gulhati Commission submitted its report in July 1962, which was sent to all the concerned state governments. The Central Government held discussions with the officials of the concerned States with a view to arriving at a negotiated settlement of the problems involved but no agreement could be arrived at. The Government of Maharashtra was not willing to reach any agreement unless its share of Godavari waters was

increased to 800 TMC. It took the stand that no consideration was given to the large proportion of the Krishna basin in its state which was subject to recurrent water scarcity and famines. Karnataka Government was also not satisfied with the recommendations made by the Gulhati Committee and wanted a larger share in the Godavari waters. In March 1963, the Union Ministers for Irrigation and Power, Sh. Hafiz Mohammad Ibrahim, in a statement in the Lok Sabha, presented a plan for the distribution of the Godavari ( and Krishna) waters but the scheme of distribution put forth by the Union Ministers was rejected by all parties to the dispute.

When about 6 years of negotiations did not yield any satisfactory results, the Government of India, by a notification, constituted the Godavari water Disputes Act, 1956. The Tribunal had the same Chairman and members as the Krishna Tribunal.<sup>21</sup>

1. Shri Justice R.S. Bachawat, Retired Chief Justice of the Supreme Court - Chairman.
2. Shri Justice Shamsher Bahadur, Retired Judge of the Punjab and Haryana High Court - Member.
3. Shri Justice D.M. Bhandari, Retired Chief Justice of the Rajasthan High Court - Member.

Mr. Justice Dibyendu Mohan Sen, Judge of the Gauhati High Court was later appointed as a member of the Tribunal in the vacancy caused by the death of Shri Justice Shamsher Bahadur in 1975.

The hearings of the Godavari case could not be taken up by the Tribunal for about 5 years because it had been agreed

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21. Report of the Ministry of Irrigation and Power, 1969-70  
p. 84

that the Tribunal would take up first the Krishna waters dispute. On the basis of the Gulhati Commission report, the Government of India passed a resolution in 1973 making tentative allocations for various projects to be executed by the concerned states on the Godavary ( and Krishna ) and their tributaries till 1976.<sup>22</sup>

In regard to the Godavari dispute the pleadings of all the concerned states were completed in 1973 and a large number of documents were submitted in evidence.<sup>23</sup> The preliminary hearings began in April 1974 after the report on the Krishna Waters had been forwarded to the Union Government in December, 1973. But the Tribunal could not proceed with the hearings because the three states involved in the Krishna dispute and the Government of India sought further guidance and/or clarifications on certain issues under section 5(3) of the Inter-State Water Disputes Act, 1956. The Tribunal again started with hearings on the clarifications sought by the States and the Central Government and gave its final award on May 27, 1976. After giving final award to the Government of India, the Tribunal has started with the investigations of the Godavari dispute.

The Government of India continued its efforts to settle the dispute through other channels. The parties to the dispute also realised that it was futile to allow about 90 percent of the Godavari waters to go waste in the sea by continuing the

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22. "Inter-State Water Disputes in India" - Indian Law Institute, New Delhi, 1971, p. 33.

23. Report of the Ministry of Irrigation and Power, 1972-73 p. 128.

querrel over rival claims.<sup>24</sup> Bilateral and Multilateral agreements were entered into by different states over the use and distribution of waters of this river in 1975.<sup>25</sup>

A much awaited settlement was agreed upon in December 1975 with the signing of an agreement between the Chief Ministers of Maharashtra, Karnataka, Madhya Pradesh, Orissa and Andhra Pradesh, involving over 2300 TMC of the Godavari waters against the total basin reservoir of 3,000 TMC.<sup>26</sup> All these agreements signed by the states shall go to Godavari Dispute Tribunal as these have been signed without prejudicing their contention and submissions before it. The Tribunal now will confine itself to the matters not covered by these accords. This is likely to facilitate the speedier disposal of all the claims. The states are also not expected to increase their claims because under the December, 1975 agreement they have been entitled to vast quantities of waters which would take a long time for them to effectively utilise.<sup>27</sup>

It is evident from the study that the Godavari waters dispute has been pending since 1963. For about 6 years the

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24. Out of 3,000 TMC of Water in the Godavari basin only 1000 TMC was utilised and the use of the remaining water was disputed among the four states, Hindustan Times, July 24, 1975.
25. Internal agreement regarding the waters of Godavari were signed among Madhya Pradesh, Maharashtra, Orissa and Andhra Pradesh (July, 1975) between Andhra Pradesh and Karnataka (September 1975), between Maharashtra and Andhra Pradesh (October 1975) and between Orissa and Madhya Pradesh.
26. Hindustan Times, December 19, 1975, p.1
27. "Godavari Waters", Hindustan Times, December 22, 1975, p.7.

Union Government relied upon its good offices to find out an amicable settlement out of court. Only after its futile attempts for such a long number of years it constituted the Godavari water Disputes Tribunal in April 1969. But the Tribunal had the same Chairman and members as per the Krishna Tribunal. As agreed to by the parties the Tribunal was to consider Godavari case after giving its final award in the Krishna Waters dispute ( which it gave in May 1976). During this period (1969-1976) no development could take place concerning the development of Godavari river and riverrvalley thereof in the absence of an agreement. This sorry state of affairs could be avoided by the Government of India by constituting an independent tribunal for the Godavari.

Also from the Godavari dispute it becomes very clear that the Government of India should attempt piecemeal settlement of water disputes out of court. Intermediate agreement should be aimed at among the concerned states leading to settlements of issues involved inter-state water in disputes by parts.

c) The Krishna Waters Disputes Tribunal. Before the middle of the 19th century, there was little development of the water resources of the Krishna basin. Most of the projects undertaken on this inter-State river were isolated works without much let or hinderence to others. The works for development of water resources were few in number, the water supply was ample in relation to the demand upon it and no use of water seriously affected other uses. So no major differences arose regarding the use and distribution of the Krishna Waters upto 1932. In 1933, differences arose regarding the allocations of the Krishna waters from the Tungabhadra projects between the erstwhile States of Hyderabad and Madras. After negotiations an agreement

was, however, reached in November 1938 between the two states on the basis of which Madras could proceed with the Tungbhadra project.

Except for the Tungbhadra tributary neither the Krishna nor any other tributary was harnessed upto 1951. An inter-State conference was held in the Planning Commission in 1951 when, after full technical examination of the problems that arose because of the distribution of waters of this river, allocations were made of the waters among the different States.

After the passing of Andhra State Act (1953) and States Reorganisation, Act (1956), the revision and modification of the 1951 agreement became necessary. The Central Water and Power Commission (CW & PC) made an attempt to bring the States together but the necessary adjustments worked out by it on the allocations of the river waters were not accepted by the state governments.

Though the 1951 agreement provided for the review of the position after 25 years, yet, because of the drastic changes in the territories of states an immediate adjustment was called for. All States except Andhra<sup>28</sup> insisted upon de-novo allocation of the Krishna Waters. The States pressed for the reallocation of the waters of the river. One of the four states that took part in the 1951 conference i.e.

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28. Andhra was in favour of the continuance of the 1951 agreement because it had received only a very small cut in the supplies available to it under the agreement - CHATURVEDI (B.N.) - "Godavari Krishna Waters Disputes", art cit. Jan.-Dec., 1967, p. 37.



Hyderabad had entirely disappeared and the States now were almost new as compared to 1951. In 1960, the Planning Commission convened another conference of States who, however, remained adamant with their own estimates and demands.

On May 1, 1961, a commission under the chairmanship of Shri N.D. Gulhati was set up by the Government of India to review the position regarding the availability of supplies in the Krishna (and Godavari) basin. The Commission was to make recommendations regarding the requirements of various projects thereon and the possibility of diverting the Godavari waters into the Krishna basin. In March 1962, the Government of Karnataka requested the Government of India to appoint a tribunal under the Inter-State Water Disputes Act so that Karnataka could get a reasonable share in the waters of the Krishna (and Godavari). The state government said that the Gulhati commission was not competent to decide on the rights or the use of river waters by the various states.<sup>29</sup> The Commission forwarded its recommendations in August 1962. The Union Minister of Irrigation and Power Sh. Hafiz Mohammad, in March 1963, made a statement regarding the allocation of the Krishna waters which was not acceptable to the concerned States. Various attempts made by the Central Government to settle the dispute out of court did not prove fruitful. The whole situation took an ugly turn when Andhra Government proposed to instal crest gates over 546 foot Nagarjunagagar dam in

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29. Indian Express, March 16, 1962, p.1. Also see to Statesman, July 19, 1967, p.7

30. Gulhati (N.D.), "Development of Inter-State Rivers", op. cit. p. 194

order to avoid surplus waters from flowing into the sea. This annoyed the Governments of Maharashtra and Karnataka and they threatened legal action against Andhra Pradesh.<sup>31</sup>

Towards the end of 1963, the Government of Maharashtra and Karnataka requested the Union Government to refer the dispute to a tribunal for adjudication. The Central Government once more attempted an amicable settlement of the dispute in August and October 1967, when the Prime Minister held meetings with the Chief Ministers of Karnataka, Maharashtra and Andhra Pradesh but all these efforts proved abortive.

Karnataka government in 1969 pressed for the reference of the dispute to arbitration. It accused the Central Government that it had been dragging its feet on the issue since 1968, despite the insistence of Karnataka and Maharashtra to refer it to a tribunal, on the plea that it was engaged in finding a compromise settlement. All this, according to Karnataka, was a clear tactic of the Union Government to give undue advantage to Andhra Pradesh.<sup>32</sup> The Irrigation Minister of Maharashtra also charged Union Minister for Irrigation and Power 'with being in league with the Andhra Pradesh Government.'<sup>33</sup>

31. Hindu, July 18, 1967. p.1. Also see Statesman, July 1967. p.7.

32. Amrit Bazar Patrika, February 9, 1969.

33. Sh. S.B. Chavan, Maharashtra Irrigation Minister, expressing his lack of faith in Dr. K.L. Rao, the Union Minister for Irrigation and Power, said, "We have a suspicion that the protracted negotiations are intended to delay a solution to the dispute and thereby allow the Andhra Government to complete its work of erecting the crest gates in the Nagarjunasagar dam, "Krishna Water Dispute" Link Vol.X (36), April 14, 1968

When prolonged discussions between the parties did not yield any solution acceptable to all the parties, the Government of Andhra Pradesh also requested the Union Government to refer the dispute to arbitration. It was compelled to make such a demand because the inter-State squabbles over the sharing of the Krishna Waters had stalled its major project at Nagarjunasagar.<sup>34</sup>

Consequently, a Krishna Water Dispute Tribunal consisting of the same Chairman and other members as per the Godavari Tribunal was constituted by the Government of India on April 10, 1969.

The states of Andhra Pradesh, Karnataka, Madhya Pradesh and Orissa were the original parties to the dispute. Orissa and Madhya Pradesh became parties to the dispute over the Krishna ( and Godavari) waters because they were interested in the diversion of the Godavari waters to the Krishna basin. On April 19, 1971, an agreement was reached among the states parties to dispute, that no state would demand such diversion. After the signing of this agreement Orissa and Madhya Pradesh withdrew from the dispute and they were discharged from the case.<sup>35</sup> The other states involved in the dispute filed their statements of cases and rejoinders and also made extensive pleadings before the Tribunal. To study local conditions and needs and to see irrigation and power projects, the Tribunal

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34. Objections to the erection and operation of crest gates in the dam by Maharashtra and Karnataka had acted as a stay on filling the reservoir at Nagarjunasagar dam to its full level. This deprived Andhra Pradesh of maximum benefits from this dam.

35. Krishna water Disputes Tribunal - Report, 1973, vol.I, p.10.

visited various places of the Krishna basin and it took more than four and a half years for the Krishna Water Disputes Tribunal to give its award. The major decisions of the Tribunal are:<sup>36</sup>

(i) The dependable flow of the Krishna upto Vijaywada had been determined as 2060 TMC. Out of this Maharashtra shall not use in any water year more than 565 TMC and Karnataka more than 695 TMC. Andhra Pradesh can use the remaining waters but shall not have any right to use water beyond 800 TMC.

(ii) The Tribunal has placed restrictions on the use of water in the Ghateprabha, Tungbhadra and Vedavati sub-basins as well as from the main stream of the Bhima river and from the catchment of the Kagra river.

(iii) The proportion of 565:695:800 shall be there for Maharashtra, Karnataka and Andhra Pradesh respectively for the division of the Krishna water flows upto 2060 TMC. For making the optimum and best use of the river waters, flow above 2060 TMC shall be equally shared by the three states.

(iv) The Tribunal has stressed the need and importance of setting up the Krishna Valley Authority. It may be constituted by an agreement among the States or may be done by an Act of Parliament.

(v) In its decision the Tribunal has made many clarifications on the issues raised by the states regarding the Tungbhadra project. Problems arising out of the Reorganisation of States in 1956 regarding the areas and sites of various

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36. The Tribunal gave its award on December 24, 1973. Report of the Ministry of Irrigation and Power, 1973-74 pp, 68-69.

projects including the project on the Tungbhadra, have also been dealt with.

(vi) Regarding the review of its award the Tribunal has provided that it may be done at any time after May 31, 2000. Further, if the Krishna waters get augmented, the contending states will have the right to ask for a greater share in the waters. In such an event no State will be debarred from disputing such a claim. To meet with the emergencies arising out of the drastic changes in the Krishna waters that may take place, the Tribunal has provided for the revised shares of the states to be determined by a review authority.

As a result of this award the Government of Andhra Pradesh was permitted to go ahead with the erection of crest gates at Nagarjunasagar which had been kept in abeyance because of objections raised by the Government of Karnataka. It could also now start work on its plan for a minor irrigation projects over the Krishna waters in Mehboob Nagar district, which had been kept pending so far because of the dispute.<sup>37</sup>

The States of Maharashtra, Andhra Pradesh and Karnataka and the Government of India filed references seeking further clarification and/or guidance on certain points of the award under section 5(3) of the Inter-State Water Disputes Act, 1956. Under this section of the Act, the Tribunal has to send a further report giving explanations and/or guidance on the points referred to it by the parties to the dispute within

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37. Hindu, December 25, 1973.

three months from the date of the decision. The same section of the water Disputes Act provides that the award of the Tribunal will stand modified accordingly and to that extent on the basis of the new report submitted by the Tribunal.

The references made by the Centre and the concerned states were taken up by the Tribunal from July 23, 1974. The reference made by Karnataka was argued by the State Counsel for over nine days. The Counsel for Maharashtra replied to these arguments but the arguments by the Counsel for Andhra Pradesh could not be taken up till August 19, 1974. On this day the Counsel for Karnataka said in the meeting of the Tribunal that Karnataka felt that the contentions of the State Government were not likely to be accepted by the Tribunal. The official representative of the State declared that the Karnataka was not going to get a fair, impartial and just decision at the hands of the Tribunal.. So, the States Government had decided to boycott the meetings of the Tribunal and would not participate in its future proceedings.<sup>38</sup>

The Tribunal proceeded with further hearings upto August 27, 1974, when the counsel for Andhra Pradesh replied to the arguments made by Karnataka. Its hearings were adjourned till September 30, 1974.

The boycott of the Tribunal by the State of Karnataka created a feeling of uncertainty among the concerned states. Central Government later on persuaded the Government of Karnataka to go back to the Tribunal.

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38. Hindu, August 31, 1974.

The Tribunal resumed hearings on these references on March 20, 1975. After several meetings the hearings were completed by the Tribunal on May 8, 1975,<sup>39</sup> and submitted its final award on May 27, 1976.<sup>40</sup> In this Karnataka has been given 700 Thousand Million Cubic Feet of the Krishna Waters in place of 695 TMC as was provided under its previous award given in 1973. Maharashtra's share in this river waters have been brought down to 565 TMC from the earlier quota of 560 TMC under the 1973 award. The allocation to Andhra Pradesh, which gets the balance of the available flow subject to the condition that it shall not acquire any right to use water in excess of 800 TMC, remains as before.

In its final award, again the Tribunal has recommended the constitution of the Krishna Valley Authority for the optimum utilisation of the river waters. This Authority shall have the representatives of the three states and the Centre on it.

If Karnataka would have not staked a claim for half of the annual flow in the river, the award of the Krishna Water Disputes Tribunal would have been operative long ago. By its earlier execution a great deal of water would have been saved from flowing wastefully into the sea.

Also, from the study of the Krishna Water Disputes Tribunal it becomes clear that the faith of States in this mechanism is very essential. In fact it is a necessary precondition for their successful functioning. Along with this, the practice of States resorting to pressure tactics

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39. Further Report of the Krishna Water Disputes Tribunal, New Delhi, 1976, p.2

40. Hindustan Times, June 1, 1976, p.14

such as boycotts of Tribunal proceedings, should be discouraged and the Union Government should take a firm stand against such tactics.

One of the conclusions drawn from the discussion in the preceding paragraphs is that such tribunals take too much time in giving their awards. Besides the constly delay involved in arbitration there remains always a fear of their decisions not satisfying the States involved. In such circumstances the prompt and faithful execution of their awards will be a big problem. For avoiding such delays it is essential that a time limit be prescribed for giving their awards. However, this time limit would naturally vary with the complexity of the issues and the number of States involved in such disputes. As the tribunal would be required to give its award with in a specified period it could be entitled to directing the States parties to the dispute to present their cases before it within a fixed period.

As is evident from this study, water disputes tribunal have their limitations. The Union Government should, therefore, constitute them only in cases where some negotiated settlement could not be arrived at. Not only this it should continue its efforts to find a mutually agreeable settlement even after constituting a tribunal and should not hesitate to make available necessary finances for the concerned States to arrange alternative sources of irrigation and power. This would lead to breaking dead locks in talks among the States involved in river water disputes.



## C O N C L U S I O N

The present study makes it obvious that the provisions in the Constitution and other mechanisms available for resolving inter-State disputes over river waters are not wholly satisfactory. Some of the areas and issues on which changes could be made are suggested in the following paragraphs.

National Water Grid. In a vast country like India some parts are perpetually ravaged by floods while there are eternal droughts in some other parts, both of which bring untold miseries to the masses. Basin of the rivers like the Ganga, the Brahmaputra and other east flowing rivers have flows in the monsoons which are in excess of the needs of the basins while the rest of the country has relatively meagre and highly variable water flows.

To save the country from floods and famines, the former Union Minister for Irrigation and Power, Dr K.L.Rao initiated the idea of establishing a National Water Grid, a challenging project with tremendous potential for alleviating the sufferings of the people of drought-affected and water scarcity areas of the country. It was conceived to inter-link various rivers for the trans-basin transfer of waters for the purpose with a view to regulating the imbalance of water resources of the country. The most important link would be the one from the Ganga to the Cauvery, connecting enroute the major river basins in the Sone, Narmada, Godavari, Krishna and the Pennar. Water will be taken from the Ganga at Patna. Had it been established, the irrigation facilities would have been available throughout the year in all parts of the country.

As emphasised earlier, the limited supply of waters available in the country which are by and large insufficient to meet the increasing future requirements of industry as well as agriculture. The utilisation of water resources needs to be planned in a way so as to not allow any water going waste in the sea. The United National

Nations Team of experts in its report on inter-linking of river waters also emphasised the importance of the National Water Grid, in the words, "From basic compilation of future water demands and water yields, it becomes evident that in the year 2000 A.D. or so the National Water Grid shall be a necessity. No time should be lost to start the very difficult and complex investigations today, so that plans will mature and are prepared in due time and the facility will become operative when the need would come."<sup>1</sup>

But the question of setting up a National Water Grid is very controversial. Its feasibility and profitability have been questioned on a variety of grounds. The greatest hurdle in the way of its execution would be its gigantic dimensions, an idea of which can be had from the fact that about 2,000 engineers will have to work continuously for about five years on the survey and investigations of this project. Even after all out efforts by the Government of India, the National Water Grid would not take less than 30-35 years to complete. Also the union Government would have to arrange Rs. 2,500 crores. Doubts have been expressed regarding its feasibility also because it would not be an easy task to lift 10 to 20 million acre feet of water to a height of 2,000 feet within a short distance of 200 miles.<sup>2</sup> The project might require more than 6 million Kilowatts of electric power. Another problem in the way of execution of this project would be that more than one third of the quantity of water in the Godavari-Cauveri link canal would be lost in transit by evaporation and absorption.

However, the proposed National Water Grid, if executed, would tend to harmonise Centre-State and Inter-State relations which would

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1. Hindustan Times, May 6, 1976

2. VAISHNAV (T.D.) "Towards a National Water Grid" Yojana p.p. 113-115

also be of no less importance. It would help in putting an end to the disputes that are usually arising among the States because, for its establishment, waters would have to be declared a national assets.

Need for Reliable Data. Such a large number of river water disputes in India may be partially attributed to some extent to the absence of reliable data in regard to surface and ground waters. Bombay government in 1921, in a letter wrote to the Government of India stating, "Almost all controversies which have upto date taken place in India have been directly attributable to the fact that adequate figures are not forthcoming. The only method of avoiding such controversies is to have at hand reliable information on the factors in the case." <sup>3</sup>

The Irrigation Commission also in its report in 1972, pointed out that, "No systematic quantitative assessment has so far been made" and "our knowledge of the vast resources of ground water is inadequate." More so, no reliable estimates of the total flow of the country's rivers are available. Often the claims of the states on the amount of water are excessive and when put together, exceed the total water supply available in a river. So, what is presently required is that these measurements should be carried out without further delay. The government of India should appoint committees and commissions comprising of technical experts under Central Water & Power Commission to make an accurate quantitative assessment of both ground waters and river flows. On such data alone a rational

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3. Eastern Economist, Vol.49(5), August 4, 1967, p.195.

programme of ground water utilisation can be based.<sup>4</sup>

Co-operation and Co-ordination in Water Policy. Government activity in any federation requires co-operation and co-ordination between its constituents in various fields. The Union and the States are inter-dependent and cannot function as water tight compartments. It is for this reason that today, federations in all countries of the world are becoming increasingly co-operative. The approach of statewise planning of harnessing inter-State rivers waters was quite satisfactory in the early stages of development when demand for waters for various purposes was relatively small and well within the resources available in each state. With the fast growing demand of water in the country, there has been a growing realisation that for optimum utilisation of national resources in general and water resources in particular the Union and the States will have to make unified efforts.

The parochialism of states in the past has led to prolonged inter-State rivalries. The harnessing of Inter-State rivers was done giving undue importance to the artificialities of the State boundaries with no sufficient emphasis on the benefits to other states and on the greater interest of the nation as a whole.

The country cannot afford to continue wasting its water resources on the present scale. To meet the increasing demands of waters with the limited supplies available, it will have to think in terms of inter-basin transfers of river waters involving a high level of inter-State co-operation. A feeling among the

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4. 21 gauging stations were set up in August, 1976 to collect accurate and reliable data along major rivers in the four western states. The Stations were set up on rivers including the Narmada, for a scientific study of nation's surface water resources. Hindustan Times, August 9, 1976, P. 6

states will have to be generated, that the waters flowing through the several rivers throughout the country are part of the national wealth and not the property of the state or states through which they flow.<sup>5</sup>

On the international plane, it is being realised that river waters should be harnessed in a planned and coordinated manner for the collective good of the countries through which they flow. The need of coordinated efforts by states within a single country to harness river waters becomes all the more important to get the fullest benefits from them. N.D. Gulhati has rightly pointed out that when an agreement could be reached between India and Pakistan over Indus waters in 1960, there is no reason for not resolving inter-State rivalries over the use of river waters between States in India itself.<sup>6</sup>

Also for an orderly exploitation of the water resources of national rivers the co-ordinated development and cooperative operations are very essential. In some cases for geographical reasons only joint development can lead to maximum benefits. There can arise a need to construct a reservoir or a dam in one state for the benefit of another state. For that what is required is that neighbouring states should be brought close and each should be mindful of the interests of the other. Only then can develop a willingness among the States which is vital for the optimum utilisation of natural resources available to them.

Water disputes by their very nature generate strong emotions because of the close inter-relation between the availability of the waters and the life and prosperity of a large number of people.

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5. F.J. Berber has also expressed similar views, "The gifts of nature are for the benefit of mankind and no aggregation of men can assert and exercise such right and ownership of them as will deprive others having equal right to enjoy the bountiful provisions of Providence." op. cit. P.57

6. GULHATI (N.D.) - "Mediation in River Water Disputes.", Hindu, August 30, 1975.

They subserve as instruments in the hands of political parties to beat each other with. (It is also one of the reasons that political parties have been trying to evade settlements of water disputes). Imposed decisions by Tribunals or by other judicial institutions may lead to orderly development of river waters but they will not necessarily yield maximum benefits and will not foster good neighbourly relations between the States which is a sine qua non for national welfare.

Solutions of Disputes through Negotiations. Agreements arrived at between the parties by negotiations stand more chances of being implemented faithfully. As negotiations and not the imposition are the basis on which the agreements are reached between the states, so, all the parties are willing to execute them without delay.

A significant instance of inter-State cooperation to harness an inter-State river was presented in 1887, when a scheme was evolved to direct the Periyar, which rose in the Western Ghats and flowed into the Arabian Sea. The aim of this diversion was to make water available for some unirrigated areas of Tamilnadu. It was all because of the cooperative attitude adopted by the erstwhile State of Travancore within whose boundaries, the Periyar flowed, that the proposed project on the Periyar could be taken up.<sup>7</sup>

Even after independence, the States have shown exemplary spirit of compromise and accommodation in planning and executing multipurpose projects which now make the foundation of agricultural irrigation in India. A typical example of this spirit of accommodation in solving inter-State river water disputes was the agreement that was arrived at between Bihar and West Bengal. The latter state had to suffer heavy losses in terms of human lives and property

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7. For details, see Report of the Irrigation Commission (1972). Vol. I, p. 349.

because of serious floods in the river Damodar. For averting these floods, dams and reservoirs had to be built in Bihar which were to result in vast areas of land being submerged in that state. It was all because of the whole hearted co-operation extended by the Government of Bihar that Damodar Valley Corporation could be set-up in February, 1948.

The development of Ganga Canal in the erstwhile States of Bikanor by a canal running for 100 miles in the territory of Punjab, a joint undertaking of the Tungabhadra project in 1948, an agreement between the former States of Punjab, Himachal Pradesh, PEPHU and Rajasthan to develop the Bhakra Nangal Complex from the Sutlej as a joint undertaking, the agreement between Madhya Pradesh and Rajasthan on the Chambal Waters, agreement on a major portion of the Godavari and an agreement between the Punjab and Jammu & Kashmir over the Thein Dam are some other examples of inter-State co-operation in this field.

A negotiated Settlement is the best solution of a water dispute between states as it leaves no bitterness behind. The Irrigation Commission(1972) also recommended that although resort to a tribunal may occasionally be necessary in inter-State water disputes, adjudication is less satisfactory than negotiations.

It is for this reason that disputes relating to the sharing of the waters of a river or a river valley are of such a nature that they cannot be ordinarily settled by judicial decision to the satisfaction of all the parties. As has been said earlier, the course to litigation breeds hatred among the parties which may tell upon the healthy functioning of the body politic. It may be helpful in finding a solution to the

dispute but the tension/<sup>may</sup> remain even after its settlement.

The idea of a piecemeal settlement of the disputes over river waters deserves serious thought by the Centre because a frontal and total attack on the whole gamut of river disputes will be fruitless. Partial agreements tend to break set and negative habits and lead to gradually widening areas of accord. The success of the Union Government in settling the dispute over a large portion of the Godavari waters out of court is a clear indication of the immense value of the method of piecemeal settlement of river water disputes.

Reference of Disputes to Tribunals. The jurisdiction of the Supreme Court or any other Court of law has been debarred in respect of water disputes in India among the states under Article 262 (2) of the Constitution. In most of the countries of the world, water disputes between the constituents of the federal system have been kept out of the jurisdiction of courts because it is generally recognised that sharing and distribution of waters cannot be based so much on rights ~~on rights~~ as on expediency. F.J. Berber has rightly pointed out that, "Water disputes are generally agreed to constitute a classical example of disputes which cannot be satisfactorily solved by judicial decision."<sup>8</sup>

Also many other disadvantages inherent in the way of settling river water disputes by making use of the judicial institutions call for their settlement out of courts. One of these being in regard to the execution of decision given by a court of law for a river water dispute because a state and especially one against which the decision of the court goes may show reluctance on her part in the faithful execution of the Courts' decision. Also, even the most carefully worded

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8. BERBER (F.J.), op. cit. p263.



judgement in respect of inter-State river water dispute is susceptible to more than one interpretation which may give birth to more disputes.

The element of compulsion which is naturally there in case of judicial decision may lead to the hardening of attitudes on the part of the States. It may stand in the way of maximising developments from river waters by freezing a situation which could otherwise be improved upon by further negotiations.

The delays involved in the settlement of the dispute by way of making use of judicial mechanism may lead to even greater damages on each of the States concerned than the paltry advantages for which they have been wrangling. The Irrigation Commission, in its report in 1972, rightly observes, "Cases of this nature (Water disputes) involving as they do, question of vital importance to the future development of an entire State or Province, are necessarily fought with great tenacity on both sides and often occupy several years..."<sup>9</sup>. Ill feelings are generated during the course of long litigations which generally sour relations between the neighbouring States. Also there is every possibility of a settlement secured by making use of the judicial process leading to a wastage of natural resources. This can be more so in the case of our country where available data regarding the flow of most of the rivers is inadequate and undependable.

Judicial decision with regard to inter-State river water disputes cannot bring satisfaction to all. There can be even the possibility of its being rejected by all the parties involved in the dispute. The Chief Minister of Karnataka expressed his

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9. Report of the Irrigation Commission. Vol. I, op.cit.p.

regret after the Bachawat Tribunal gave its award to the Government of India over the Krishna Water Dispute and said in a statement that it was a mistake on the part of the State to refer the dispute to a Tribunal. He added that the State Government had thus learnt a lesson.<sup>10</sup>

There is no doubt that water disputes tribunals need more times for giving awards. Also their awards may not give satisfaction to all the states involved in the disputes. But there is no substitute for such tribunals in settling river water disputes in the country. Political Settlements do not ensure to the same extent a durable solution since the parties concerned can always change their stand. The Central Government cannot go on making efforts for the negotiated settlement of river water disputes for years together because such disputes, if allowed to drift, may prove harmful to national interests. However, some changes in the whole situation deserve to be considered.

Facilities available to the Tribunals should be increased with regard to the visits of sites etc. Technical experts drawn from the Central Water and Power Commission and other technical bodies should be associated with Water Dispute Tribunals. Separate Tribunals should be constituted for each river under dispute as the experience of the Tribunals constituted for two rivers with the same Chairman and members has not proved a success (The Tribunals constituted for the Krishna and Godavari Rivers water disputes with the same Chairman and members took about seven years for giving their award over the Krishna waters disputes). Also the experience of the working of water dispute

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10. Hindu, January 28, 1974.

tribunals in India has shown that they take very long time for giving their awards. All this results in inordinate and costly delays in coming to the settlements on the disputed waters of rivers in the country. So there is a case for fixing a time limit for the water disputes tribunals to give their awards. After fixing a time limit for the Tribunals the States involved the disputes will be required to place their cases before such Tribunals within the time allotted to them, which will in turn lead to expeditious settlement of river water disputes. The time limit, however, should vary with the complexity of the problem and the river basin in question.

Therefore, one may conclude that political agreements are not lasting solutions to river water disputes as they cannot be relied upon to remain constant. Only impartial tribunals can be able to give an award which is fair and conclusive even if it does not satisfy all the concerned states. In short, the mechanism envisaged under the Inter-State water disputes Act, 1956, should be allowed to operate with minor adjustments.

Inter-State Council. There is one important provision in the Constitution which has remained unimplemented even after 26 years of the enactment of the law of the land. It is Article 263 which provides for the setting up of an Inter-State Council to advise on disputes and matters of common interest between the Union and the States. Such a council may be charged with the duty of negotiating a dispute between two states, or in which states or the Centre may have an interest. The proposed Council would be empowered to make such recommendations as will promote the coordination of policy and action in Indian Federation. What becomes clear from all this is that Article 263 does not aim at providing

a mechanism for conflict resolution between different constituents of Indian Federation but also aims at facilitating coordination of their activities. Though some bodies at Zonal levels have been constituted by the President of India, this Council has yet to see the dawn.

Almost all of the committees conferences and commissions which undertook the task of going into centre-State relations recommended that such a body shall play an important role in promoting fruitful co-operation among States and shall be very helpful in toning down causes of inter-state friction. The A R C in its report on Centre-State Relationships recommended that the body should be constituted to perform functions indicated in Article 263 of the Constitution. Earlier, the ARC study Team on Centre-State Relationships also recommended the establishment of an Inter-State Council under Article 263 of the constitution of India though it differed with ARC with regard to the constitution of such a body.<sup>11</sup>

The Rajamannar Committee appointed by the Government of Tamil Nadu to study Centre-State Relations recommended in its report in 1971 the immediate constitution of the Inter-State Council.<sup>12</sup> To make it really effective it suggested that its recommendations should be ordinarily binding on both the Centre and the States. Every bill of national importance or which is likely to affect the interests of one or more states should be placed before the Council and it should be introduced in Parliament with comments and recommendations made by this body. In its

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11. ARC Report on Centre-State Relationships, op.cit.p.33

12. for the composition of role of the proposed Council see ARC Report on Centre -State Relationships, 1969, p.33  
Report of the Centre-State Relations Inquiry Committee (Rajamannar Committee), 1971, p. 24.

report it recommended that in case of rejecting any recommendation by this council, the Central Government should be required to lay before the Parliament and the State Legislatures, such recommendations with the reasons for their rejection. On the contrary, the ARC had envisaged the Inter-State Council as purely an advisory body whose recommendations would not be binding.

The need of a common agency, like the Inter-State council, to facilitate meetings of State representatives with those of the Central Government, cannot be denied. The Union Government has however not been in favour of acting on these recommendations so far. There is no doubt that the setting up of the proposed Council will prove beneficial in stemming political animosities and resolving water disputes on a national level. But the implementation of an important recommendation regarding the setting up of a National Water Resources Council by the Central Government can be even more fruitful. The proposed Council could bring to an end the inter-State river water disputes and ensure the optimum utilisation of water resources in the country.

National Water Resources Council: A proposal was made in 1975 by the President of India in his opening address to the Parliament, to set up a national water resources council with adequate powers to prepare master plans for river basins.<sup>13</sup> The importance of constituting such a body at the apex or forming some national authority to regulate the utilisation

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13. "Our Water Resources-A Survey", Yojana. Vol.XX(1), January 26, 1976 p.30

of national water resources was emphasised by the Chairman of the C.W. & P.C. at the seminar held in Calcutta.<sup>14</sup> In May, 1976 the Union Minister for Irrigation and Agriculture Sh. Jagjivan Ram informed the Lok Sabha that the Union Government was in consultation with the state governments on the question of making river waters national property.

In India the need for constituting such a body becomes an urgent necessity because statewise approach to the exploitation of inter-State river water resources has done considerable harm to India. For achieving optimum benefits from river waters in the country such an approach cannot be allowed to continue any longer. Tension-ridden inter-state and Centre-State relations also call for constituting a national authority for harnessing river waters in the country for formulating national water policy. Only by constituting such a Central Authority can smooth sailing in the relations among the States on the one hand and between the Centre and the States on the other be ensured.

Regarding the role to be assigned to the proposed national water resources development council irrigation commission (1972) in its report had suggested that such a body at the apex would keep a continuous watch on the working of seven River Basin Commissions set-up in the country.<sup>15</sup> It would also ensure that the the formulation and execution of irrigation projects conforms to highest national interest. The proposed council would suggest priorities for accelerated development of water resources of such basin.<sup>16</sup> It would also review the plans prepared by the River Basin

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14. Hindustan Times, April 19, 1976

15. Report of the Irrigation Commission, Vol-I, op.cit. p.290

16. Ibid p.291.

Commissions before they are forwarded to the Centre. The responsibility for framing policies areas would also lie on it.

One of the most important roles to be played by National Water Council would be in a field of revolving inter-State differences over river waters. In case of any inter-State disputes, the proposed council would appoint a Committee of experts drawn from River Basin Commissions. This committee would be required to collect the facts and give its advice on the steps to be taken for achieving optimum utilisation of water resources. The Council then, would conduct negotiations with the State concerned and would give its final decision.<sup>17</sup> In matters involving law it would be entitled to obtain advice of the supreme court.

Sufficient headway has been made in solving water disputes between states. As has been said earlier, a few of these have been provisionally settled recently.

With the formulation of a national water policy and with the establishment of the proposed National Water Resources Council at the apex, the process of solving inter-State disputes over river waters can move more smoothly and decisively. Further, the envisaged Council would help to develop a national outlook in regard to water resources in the country by infusing a spirit of mutual accommodation. In this way, a favourable atmosphere would be created which would help in restoring relationships of mutual trust and faith between the states and in bringing to an end many inter-State disputes over river waters.

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17. 1 bid p. 291

One of the major conclusions of this study is that the Central Government should go ahead with the idea of establishing a National Water Resources Council with the Prime Minister as its Chairman. If established, this Council would be an instrument for remedying regional imbalances in surface water supply by transferring water from surplus to deficit regions. In August, 1976, Mr Jagjivan Ram Union Minister for Agriculture and Irrigation, told the Parliamentary Consultative Committee attached to his Ministry, that the Ministry was considering a proposal to set up a National Water Resources Council. He further said that the settlement of inter-State water disputes required a climate of acceptance of water as a national asset by the States.<sup>18</sup> The proposed course of action is likely to contribute towards lessening of tension in this conflict area and reducing the possibility of further conflicts, thereby promoting optimum utilisation of scarce resources for national development.

For this necessary amendments to the Constitution would have to be introduced. But, one thing that should not be lost sight of is that amendments in the present Constitution or its overhauling alone will not weed out the seeds of discontent, stresses and tensions that embitter inter-State and Centre-State relations. The occasions for inter-State differences may arise even then.

#### A National Water Policy:

The rivers are national assets. Their development needs to be planned on a national basis with least regard to the artificial boundaries of States. It is a truism that India's water resources are limited and its needs are far in excess

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18. Statesman, August 25, 1976, p. 5.



of the supplies available in the country. Sh.A.D.Moddie, a famous economist warned that if the present State of Affairs regarding water management would be allowed to continue, India would be a water thirsty nation by 1990. Speaking at a seminar on "Economic Development and Environment Problems", Sh.Moddie said that only one-fourth of the total water of India could be made available to agriculture.<sup>19</sup> Further these requirements are fast increasing because of the notable development in agriculture and industry. But the country will be able to meet these increasing requirements, if, steps are taken here and now to ensure a co-ordinated development and utilisation of the water resources of all major and minor river basins.

In the past, the country's water resources could not be fully harnessed because Water was taken as an unlimited gift of nature. The Commercial outlook of the British rulers was one of the factors responsible for slow growth in regard to the harnessing of river waters. But their development has not been satisfactory even in independent India. The reason for that is the wide powers which state governments enjoy under the new Constitution in respect of waters. After being equipped with such powers described in Chapter I, States have been treating water as their property and have been preparing schemes and planning projects keeping in view the benefits of their respective states only.

While preparing plans for harnessing river waters, states have been giving undue importance to artificial boundaries cutting up river basins. They forget that a river basin is a single living unit and the maximum benefits can be derived from it only by its integrated development. The result is an increasing number

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19. Times of India, November 24, 1976, p.3.

of inter-State river water disputes causing great losses in terms of power development and food production. The whole problem is aggravated in the absence of a national water policy.

For finding an enduring solution to these problems states will have to be taught to come out of their parochialism and accept the fact that natural resources including river waters are national property that have to be scientifically used. A sense of partnership and not of partisonship based upon a new way of thinking will have to be infused in them so that the accidents of administrative boundaries are not allowed to deny the country the benefits of its river waters.

## A P P E N D I X - I

### RELEVANT EXCERPTS FROM GOVERNMENT OF INDIA ACT, 1935

#### Interference with water supplies

##### Complaints as to interference with water supplies

130. If it appears to the Government of any Governor's province or to the Ruler of any Federated State that the interests of that State or Province or of any of the inhabitants thereof, in water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State have been or are likely to be effected prejudicially by
- (a) any executive action or legislation taken or passed, or proposed to be taken or passed; or
  - (b) the failure of any authority to exercise any of their powers with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor General.

##### Decision of Complaints

131. (1) If the Governor General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he thinks fit, and request that Commission to investigate the accordance with such instructions as he may give to them, and to report to him on, the matters to which the complaint relates, or such of those matters as he may refer to them.
- (2) A Commission so appointed shall investigate the matters referred to them and present to the Governor General a report setting out the facts as found by them and making such recommendations as they think proper.
- (3) If it appears to the Governor General upon consideration of the Commission's report that anything therein contained requires explanation or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.
- (4) For the purpose of assisting a Commission appointed under this Section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purpose of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the Court.

(5) After considering any report made to him by the Commission, the Governor General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper.

Provided that if, before the Governor General has given any decision, the Government of any Province or the Ruler of any State affected request him to do so, he shall refer the matter to his Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected to any order made under this Section by His Majesty in Council or the Governor General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as here-inafter provided the Governor General on application made to him by the Government of any Province or the Ruler of any State affected, may at any time, if after a reference to, and report from, a Commission, appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this Section.

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council shall His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) An order made by His Majesty in Council of the Governor General under this Section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or person in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) The functions of the Governor-General under this Section shall be exercised by him in his discretion.

Interference with water supplies of Chief Commissioner's Province.

132. If it appears to the Governor General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any natural source of supply in any Governor's Province or Federated State 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, or

- (b) the failure of any authority to exercise any of their powers.

with respect to the use, distribution or control of water from that source, he may, if he thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor General.

133. Notwithstanding anything in this Act, neither the Federal Court nor any other Court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State or the Governor General.
134. The provisions contained in this part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State, the Ruler where of has declared in his Instrument of Accession that those provisions are not to apply as relation to his State.

## A P P E N D I X - II

### RELEVANT EXCERPTS FROM THE INTER STATE WATER DISPUTES ACT, 1956. (No. 33 of 1956)

#### Complaints by State Governments as to water disputes

3. 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 of 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 the manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication.

#### CONSTITUTION OF TRIBUNAL

- 4(1) When any request under Section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute can not be settled by negotiations, the Central Government shall, by notification in the Official Gazette, constitute a Water Dispute Tribunal for the adjudication of the water dispute.
- (2) The Tribunal shall consist of a Chairman and two other members nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are judges of the Supreme Court or of a High Court.
- (3) The Tribunal may appoint two or more persons as assessors to advise it in the proceeding before it.

#### ADJUDICATION OF WATER DISPUTES

- 5(1) When a Tribunal has been constituted under Section 4, the Central Government shall, subject to the prohibition

contained in Section 8, refer the water dispute and any matter appearing to be connected with, or relevant to, the water dispute to the Tribunal for adjudication.

- (2) The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it.
- (3) If, upon consideration of the decision of the Tribunal, the Central Government or any State Government is of opinion that anything therein contained required explanation or that guidance is needed upon any point not originally referred to the Tribunal, the Central Government or the State Government, as the case may be, may within three months from the date of the decision, again refer the matter to the Tribunal for further consideration; and on such reference, the Tribunal may forward to the Central Government a further report giving such explanation or guidance as it deems fit and in such a case, the decision of the Tribunal shall be deemed to be modified accordingly.
- (4) If the members of the Tribunal differ in opinion on any point, the point shall be decided according to the opinion of majority.

(6) PUBLICATION OF DECISION OF TRIBUNAL

The Central 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.

BAR OF REFERENCE OF CERTAIN DISPUTES TO TRIBUNAL

- (8) Notwithstanding anything contained in Section 3 or Section 5, no reference shall be made to a Tribunal of any dispute that may arise regarding any matter which may be referred to arbitration under the River Boards Act, 1956.

BAR OF JURISDICTION OF SUPREME COURT AND OTHER COURTS

- (11) Notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act.

DISSOLUTION OF TRIBUNAL

- (12) The Central Government shall dissolve the Tribunal after has forwarded its report and as soon as the Central Government is satisfied that no further reference to the Tribunal in the matter would be necessary.

## A P P E N D I X - III

### RELEVANT EXCERPTS FROM THE RIVER BOARDS ACT, 1956 (No. 49 of 1956)

An act to provide for the establishment of River Boards for the regulation and development of inter-State rivers and river valleys.

#### CHAPTER II

##### Establishment of River Boards.

##### Establishment of Boards

- 4(1) The Central Government may, on a request received in this behalf from a State Government or otherwise, by notification in the Official Gazette, establish a River Board for advising the Governments interested in relation to such matters concerning the regulation or development of an inter-State river or river valleys or any specified part thereof and for performing such other functions as may be specified in the notification, and different Boards may be established for different inter-State rivers or river-valleys:

Provided that no such notification shall be issued except after consultation with the Governments interested with respect to the proposal to establish the Board, the persons to be appointed as members thereof and the functions which the Board may be empowered to perform.

##### COMPOSITION OF BOARD

- 5(1) The Board shall consist of a chairman and such other members as the Central Government thinks fit to appoint.
- (2) A person shall not be qualified for appointment as a member unless, in the opinion of the Central Government, he has special knowledge and experience in irrigation, electrical engineering, flood control, navigation, water conservation, soil conservation, administration or finance.

#### CHAPTER III

##### Powers and Functions of the Board

##### Matters in respect of which a Board may be authorised to tender advice

13. A Board may be empowered under sub-section (1) of Section 14 to perform all or any of the following functions, namely:-
- (a) advising the Governments interested on any matter concerning the regulation or development of any specified inter-State river or river valley within its area of operation and in particular, advising



them in relation to the co-ordination of their activities with a view to resolve conflicts among them and to achieve maximum results in respect of the measures under-taken by them in the inter-State river or river valley for the purpose of:-

- (i) Conservation, control and optimum utilisation of water resources of the inter-State River;
  - (ii) promotion and operation of schemes for irrigation, water supply or drainage;
  - (iii) promotion and operation of schemes for the development of hydro-electric power;
  - (iv) promotion and operation of schemes for flood control;
  - (v) promotion and control of navigation;
  - (vi) promotion of afforestation and control of soil erosion;
  - (vii) prevention of pollution of the waters of the inter-State river;
  - (viii) such other matters as may be prescribed;
- (b) preparing schemes, including multipurpose schemes, for the purpose of regulating or developing the inter-State river or river valley and advising the Governments interested to undertake measures for executing the scheme prepared by the Board;
  - (c) allocating among the Governments interested the costs of executing any scheme prepared by the Board and of maintaining any works undertaken in the execution of the scheme;
  - (d) watching the progress of the measures undertaken by the Governments interested;
  - (e) any other matter which is supplemental, incidental or consequential to any of the above functions.

#### Functions of Board

- 14(1) The Central Government, after consultation with the Governments interested, may, by notification in the Official Gazette, empower the Board to perform all or such of the functions under Section 13 as may be specified in the notification.
- (2) The Board shall exercise its powers and perform all the functions which it is empowered to do by or under this Act within its area of operation.

- (3) In performing its functions under this Act, the Board shall consult the Governments interested at all stages and endeavour to secure, as far as may be practicable, agreement among such Governments.

CHAPTER IV  
Miscellaneous

Arbitration

- 22(1) Where any dispute or difference arises between two or more Governments interested with respect to:-
- a) any advice tendered by the Board under this Act;
  - b) any measures undertaken by any Government interested in pursuance of any advice tendered by the Board;
  - c) the refusal or neglect of any Government interested to undertake any measures in pursuance of any advice tendered by the Board;
  - d) the sharing of benefits or financial liabilities arising out of any advice tendered by the Board;
  - e) any other matter covered by this Act or touching or arising out of it, any of the Governments interested may, in such form and in such manner as may be prescribed, refer the matter in dispute to arbitration.
- (2) The arbitrator shall be a person to be appointed in this behalf by the Chief Justice of India from among persons who are, or have been, judges of the Supreme Court or are judges of a High Court.
- (3) The arbitrator may appoint two or more persons as assessors to assist him in the proceeding before him.
- (4) The decision of the arbitrator shall be final and binding on the parties to the dispute and shall be given effect to by them.

Dissolution of Board and Transfer of Assets and Liabilities

- 27(1) When the Central Government is of opinion that a Board has performed its functions under this Act, the Central Government, may, by notification in the Official Gazette, declare that the Board shall be dissolved from such date as may be specified in this behalf in such notification; and the Board shall be deemed to have been dissolved accordingly.

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