

The Epilogue

The present exercise of tackling the tremendously significant albeit extremely difficult, problem of settlement of international as well as inter-State water disputes in India had a three dimensional objective, namely, an in-depth scrutiny of the dispute-settlement phenomenon in the past, a thorough analysis of the present legal mechanism of dispute settlement and a supporting attempt towards strengthening the evolution of a better dispute-settlement mechanism and set-up for the future.

In our analysis of India's international water disputes with its neighbours the reference was to specific disputes; therefore, an identification of generalized legal rules or principles in this regard was neither attempted nor considered advisable. In this regard it is pertinent to recollect that even Article XI (2) of the Indus Water Treaty of 19th September, 1960, which Treaty settled the Indus Canal Water Disputes between India and Pakistan, had also clearly laid down that "nothing in this treaty shall be construed by the Parties as in any way establishing any general principles of law or any precedent". However, in the treatment of this subject our endeavour has been to present concretized elucidation of the related concepts, a critical analysis and evaluation of various theories prevailing and invoked in this field, a thorough examination of basic problems involved in sharing water benefits including, *inter alia*, the problems of determination of order of priority for various uses of water as also the factors creating legal rights and equitable factors suggested to be applied for distribution of water of international water resources. This endeavour coupled with our scientific evaluation of various sources of law engaged in the attempts to supply and develop legal norms for the settlement of international water disputes, will, in our opinion, serve as highly useful help-material for the settlement of international water disputes in general and India's international water disputes with its neighbours in particular.

All the same, it may be emphasized here that all this help-material should be utilized, for settling the international water law disputes generally through treaties, because this mode, basically being based on "the consent" of the concerned parties, has effectively demonstrated, beyond doubt, its suitability and superiority as a mode of settlement of international water law disputes. "The past state-practice approves this mode and for future water-dispute settlement also treaties possess the prospects of being accepted as the most appropriate mode" (Chauhan, 1981, 466)

As regards inter-State water disputes it is worthwhile to quote what this writer has stated elsewhere:

"while comparing the federal law, regulating the relations between autonomous or semi-autonomous units of a federal state, with international law, regulating the relations of sovereign states, one finds a

skeleton similarity and as such, finding it convenient, there is a temptation to apply the analogies and results from the field of federal law to the domain of international law but on exact scrutiny we find that the structure of the community of states at international level reflects a community of sovereign states governed by international law, whose basic principles are substantially different from the basic principles of municipal federal law which reflects the organisation of a federal state enforcing court judgements and its federal governmental administrative decisions vis-a-vis its member states or units which function within the overall sovereignty of the federal state, envisaging the enforcement of law and order by a superior will. Hence, because of this difference the rules of law and decisions of the court developed or pronounced within federal structures for inter-state or inter provincial water law disputes, cannot, by analogy, be applicable to the field of international water law disputes in international drainage basins which is the field of international law proper". (Chauhan, 1981, 465-66)

While agreeing to the view points mentioned above, it will be quite logical to accept the converse, i.e., the rules and principles prevailing and operating in the domain of international water law should not, ipso facto, be made applicable in the domain of federal water law. But there is one difference. If the federal structure of a state finds some principles or theories prevailing in the domain of international water law, useful and that federal structure adopts the same purposefully in practice for achieving a just distribution, those principles or theories, otherwise operating in the field of international water law, get adopted in the field of federal water law of the concerned state provided the same are not contrary to the express provisions of state law in the concerned state.

As regards the settlement of inter-State water disputes in India, the present work has not only provided a conceptual understanding of the related issues and problems in general but has also fairly elucidated the directly involved concepts of "inter-State rivers and river valleys" and also examined the connotation of the term "inter-State water disputes" itself from all angles of interpretation. It has examined all the theories, prevailing in the field of inter-State water law, in detail. Besides, the basic substantive problems involved in sharing water benefits, inter alia, the problem of determining the exact quantum of share of water of the respective contestant States by pressing into service various factors creating legal rights as well as the equitable factors have also been analyzed.

While dealing with the inter-State scenario the present work has given a brief description of all the major basins and river systems in India and examined historically the position of India's inter-Provincial or inter-State rivers starting right from the period of the Charter of 1833. In order to complete the picture the statutory and constitutional provisions regulating the present inter-State water-dispute settlement mechanism have been examined in detail.

The relevant source material pertaining to the settlement of inter-State water disputes was thoroughly scrutinized and in order to supplement, enrich and enhance the effect and utility of this source material the state-practice prevailing in some model and representative federal systems as well as in some non-federal politics was examined.

By way of tackling the evaluation of the actual problems, the present work has ventured to examine in detail all the major inter-State water disputes, the problems of a number of moderately important projects and some ordinary, but technically significant, water disputes.

In the process of undertaking an appraisal of the problems of inter-State water disputes in India, the present work has not followed the beaten track of making vague and generalized observations but has, on the other hand, boldly ventured to adopt the technique of providing the specifics. A fairly good number of guiding principles, considered to have emerged in the form of state-practice, have been identified and a fair and frank evaluation of the present inter-State water dispute-settlement mechanism has been made.

Finally, a few suggestions and recommendations have been made in the hope that, if implemented, these will result in improvement of the existing dispute-settlement mechanism for better results in future. These suggestions and recommendations may not be perfect; but the same are precise, concrete, clear and fairly workable.

While engaged in this study the author became conscious of the dire consequence of a water dispute remaining unsettled for a long period. During the period of stalemate there is scarcity of water for different uses including the domestic use. In other words, the water resource in question remains inaccessible to the concerned States and thus the concept of "optimum utilization or exploitation of water" receives a severe setback. An atmosphere of socio-political tension is created all around. During this period of uncertainty the process of 'development' in the contestant States suffers. But the damage is much deeper in terms of human suffering. If we take only the domestic use of water, it is the womenfolk that suffer the most when the dispute remains unresolved for indefinite period. In the rural areas women have to trudge long distances even in inclement weather to fetch water. In urban areas also running of the household without the basic minimum quantum of water causes untold misery to housewives. In the ultimate analysis, the non-resolution of a water dispute causes great distress to the common people especially to women. Therefore, a speedy settlement of a water dispute will alleviate the suffering of the common people, besides, affording facilities for economic development.

This endeavour might not have succeeded in producing a perfect or monumental treatise. However, the author hopes that time and labour involved in bringing out this volume will be amply rewarded if this help-material can be of assistance to readers, scholars and institutions interested in understanding and resolving international as well as inter-State water disputes with the ultimate objective of optimum utilization of water for socio-economic development.