

CHAPTER XI

SUMMARY OF RECOMMENDATIONS

(i) Consolidation of Various Irrigation Acts

The agricultural production cannot depend solely on natural rain fall and artificial irrigation is a necessity. In India, irrigation being a state subject (excepting inter-state rivers and river valleys whose regulation and development under the control of the union is declared expedient in the public interest by Parliament), the states have enacted their own legislation covering various aspects of irrigation to fulfil their primary responsibility to develop water resources. Not only are there different irrigation statutes for different states but also in most states there is a multiplicity of laws covering various aspects of irrigation management and administration resulting in inefficiency of their administration through multiple authorities. For efficient administration of irrigation, it may be suggested that existing irrigation laws of each state be consolidated into one statute to avoid multiplicity, and the consolidated statute should apply uniformly to all regions within the state.

It is possible to divide the country into four regions, each with a fair degree of homogeneity, for the purposes of irrigation administration. These regions roughly are : the North, comprising the states of Rajasthan, Jammu and Kashmir, Punjab, Haryana, Uttar Pradesh, Himachal Pradesh and the union territory of Delhi; the East, consisting of the states of Bihar, West Bengal, Orissa, Assam, Nagaland, Manipur, Tripura, Meghalaya and Arunachal Pradesh ; the West, comprising the states of Gujarat, Maharashtra and Madhya Pradesh ; and the South, consisting of the states of Kerala, Tamil Nadu, Mysore and Andhra Pradesh.

The process of consolidating the existing irrigation laws would be facilitated if the union government were to frame model laws to serve as a guideline for each region subject to state making such variations as special circumstances may necessitate.

(ii) The Rights of the State in the Waters

No individual may claim any prescriptive rights of easements against the government in the waters of rivers, streams etc. The states have inherent right to administer or regulate the water flowing within their territories subject to the right of a riparian to get the customary quantity of water. The rights and obligations as between the state and the irrigators in India in the matter of irrigation rest largely on customs and practices subject to irrigation statutes to some extent.

The government's right to control the supply and distribution of irrigation waters is not merely a proprietary right but is a sovereign right. Though the government's right to regulate irrigation in natural waters etc. is paramount and sovereign in character, it cannot be exercised arbitrarily. In exercising its right, the government should not inflict injury on other riparian owners or diminish the supply which the irrigators have hitherto utilised. The government cannot abdicate its duty of seeing that there is equitable distribution of water between tenants under each channel source. The government officers have no right to arbitrarily deny to a ryotwari holder water which for years he has been accustomed to receive for second crop cultivation on his lands.

As regards ground water, it may be suggested that the state governments should have the legal power to regulate ground water but waters down to a particular depth, say thirty metres in alluvial plains, may be exempted from control.

(iii) Supply of Water for Irrigation

The study of various irrigation statutes reveals that there is no uniformity regarding the provisions and procedure for the supply of water for irrigation. In some statutes water is given in terms of irrigation agreements, in some it is done under rules framed by *panchayats* or state government while in some other states it is done by irrigation officials on the recommendations of committee constituted under statute. The provisions regarding extent, time and duration of supply are not similar in all the statutes. However, the conditions under which supply may be stopped is almost the same in all the statutes. There is only one state, i.e. Mysore, where cropping pattern is regulated under statute. It may be pointed out that different laws and practices appear to be justified by special circumstances of various states.

(iv) Provision for Water Courses and Field Channels on the Irrigation System

The irrigation statutes should contain a uniform definition of the terms 'water course' and 'field channel' as given by the Planning Commission which is as follows :

A water course is a channel built at government expense, to convey water from an outlet to a hundred acre block or as may be prescribed. A field channel is a channel built by cultivators beyond the water course to serve the various fields within the blocks.

The irrigation statutes applicable in different states contain varying provisions regarding the construction and maintenance of water courses

and field channels. In practice, however, these provisions have failed to ensure satisfactory construction and maintenance of water courses and field channels.

It may be suggested that the law and practice in regard to the construction and maintenance of water courses and field channels as it obtains in Punjab under the amended Northern India Canal and Drainage Act 1873 be examined by other states with a view to find out how far they can be made applicable to their territories.

Further, it may be suggested that the law relating to water courses and field channels should provide as follows :

- (i) the water courses should be constructed by the government at its cost, but the responsibility for their maintenance would rest on the beneficiaries ;
- (ii) the field channels should be constructed and maintained by the beneficiaries ;
- (iii) in case of failure to construct and/or maintain a water course or field channel, the state should have the power to undertake the construction and/or maintenance of such works and the cost may be recovered as arrears of land revenue ;
- (iv) the state should have the power *suo motu* or on an application made in this behalf by a majority of irrigators likely to be benefited and holding not less than fifty per cent of the lands likely to be benefited, to construct field channels and recover the cost from the beneficiaries ;
- (v) the provisions of the Northern India Canal and Drainage Act as applicable to Punjab should be adopted for acquiring land for the construction of water courses and field channels ;
- (vi) the compensation for the land acquired for field channels should be recoverable prorata from the beneficiaries on the basis of the area irrigated and as arrears of land revenue; and,
- (vii) the basis of assessing compensation for the lands acquired for water courses must be specified as in the Mysore Irrigation Act 1965.

(v) Settlement of Disputes among Irrigators

The study of irrigation statutes reveals that the provisions of the Northern India Canal and Drainage Act as applicable to the State of Punjab concerning dispute settlement machinery are an improvement over the provisions of other statutes applicable in all other states. It may

be suggested that this provision should be incorporated in all the statutes. The entire dispute settlement machinery should be confined only to the irrigation department of the government and no provisions for appeal or revision etc. should be made before the civil courts or revenue officials. Further, it may be suggested that an official of the irrigation department, canal officer should, in the first instance, be empowered to bring about a compromise between the parties. In the event of his failure to bring about reconciliation between the parties, he should forward the dispute to the Divisional Canal Officer (D.C.O.) who will decide the matter on merits. An appeal should lie to the Superintending Canal Officer (S.C.O.).

(vi) Requisition of Labour in Emergency

Compulsory requisition of labour is against human dignity and personal liberty. Therefore, the right to requisition labour should be restricted to only sudden and extraordinary situations. In no circumstance should it be resorted to annual silt clearance or to the normal maintenance of irrigation and drainage schemes. The power of requisition should be exercised only when the necessary labour is not otherwise available. The payment for the labour supplied should be at a uniform rate of fifty per cent in excess of the amount paid for similar work in the locality where the work is to be done and if the work is to be done in the night, the payment should be double the ordinary rates. The payment should continue till such a person is prevented from following his ordinary work. The provision should also be made for appeals against the amount tendered by the canal or irrigation officer to higher authority as a check on the arbitrary decision of the former. Further, the failure to supply the labour as well as the failure of the requisitioned labour to attend to the allotted duties should be made punishable with imprisonment or fine. The offence should be made continuing with prescription of a daily fine. The form of requisition should be such as stated in sections 64 and 65 of the Northern India Canal and Drainage Act. Provisions should also be made for compulsory requisitioning of materials in emergency.

No doubt a number of statutes applicable in a number of states contain provisions regarding requisition of labour, but there is no uniformity in their provisions. Some state statutes do not contain any provision at all. It may be suggested that for the purpose of uniformity, the irrigation statutes of all the states should contain provisions on the basis of the above suggestions.

(vii) Role of Irrigation Panchayats

Some of the state statutes contain provisions for entrusting certain functions relating to irrigation to irrigation *panchayats* and irrigators' cooperatives. However, their working has not been satisfactory in practice,

Despite this fact, it may be suggested that some kind of body composed of irrigators created to share the responsibilities of irrigation would induce a sense of participation. The village *panchayats*, *zila parishads* and irrigators' cooperatives could be entrusted with the responsibility of constructing and maintaining small irrigation works such as tanks, tubewells, water courses, field channels etc. and to regulate supply of water therefrom. For this purpose, they should be empowered to levy cess. Their working, however, should be subject to close supervision of the state government. The state governments should examine the nature of organisations or societies of irrigators to be set up, whether the membership of such bodies should be compulsory or optional and the nature of duties to be entrusted to them. The powers may be given to them in stages.

(viii) Protection of Irrigation Works and Unauthorised Irrigation

All the irrigation statutes contain specific and detailed provisions regarding punishment of offences committed with a view to damage irrigation works, stopping supply of water and taking supply of water without permission and the quantum of punishment prescribed in various statutes varies from fine to imprisonment. However, excepting some statutes, no provision is made in other statutes regarding compounding of offences relating to minor matters. It may be suggested that all the statutes should contain provisions to this effect.

The enforcement of the penal provisions of the irrigation Acts is the responsibility of the irrigation officials and revenue officials. This dual departmental control tends to delay the quick disposal of irrigation offences. Hence, the dual control must cease. Further, the vesting of magisterial powers in canal officers will not be proper as that will amount to combining the functions of prosecutor and judge in the same person. Therefore, it may be suggested that among the serving magistrates of the district, one or more may be specifically assigned the work of trying irrigation offences. This measure will considerably expedite the disposal of irrigation offences and engender fear and respect for law and authority.

All the irrigation statutes contain provisions for penal rates for unauthorised use of water varying from just the ordinary rates in some statutes to as much as ten to thirty times the ordinary rates in others. Appeals against the assessment of penal rates by canal officers are provided in all the statutes. It may be suggested that the existing provisions for the assessment and recovery of penal rates for unauthorised use or wastage of water should be retained. Where the rates are low, they should be raised so as to make them really penal. Further, the canal officers should be more vigilant in stopping canal supplies to any person responsible

for the unauthorised use of canal water. The method of extensive patrolling and inspection of canals and channels prevalent in Haryana should be adopted in other states also.

(ix) Drainage and Prevention of Waterlogging

All irrigation Acts must contain provisions for drainage of land as it is important for successful cultivation. In this connection it may be pointed out that Punjab has made some salutary provisions for the expeditious construction of field drains and sharing of the expenditure for such construction which may usefully be introduced in some other states. The practice of making beneficiaries share a portion of expenditure for construction of field drains as adopted in Punjab may profitably be introduced in other states also in order to discourage, as far as possible, unnecessary demands for construction of small field drains in a drainage system.

(x) Financial Returns from the Irrigation Projects

The two important kinds of financial returns from the irrigation projects are—water rates and betterment levy. As regards the basis for fixing water rates, different expert studies have suggested different criteria. The most recent study was made by the Second Irrigation Commission. The Commission felt that there could be no precise formula for the fixation of water rates but recommended the following principles as a guideline :

- (i) water rates should be levied on a 'crop basis' except in the case of irrigation from tube wells;
- (ii) the rate should be related to the gross income from the crop and not to the cost of the project. It should range between five per cent and twelve per cent of gross income, the upper limit being applicable to cash crops ;
- (iii) the rates should be within the paying capacity of irrigators and should aim at ensuring full utilisation of available supplies ;
- (iv) between regions with a similar class of supply, there should be the minimum disparity, if any, in the rates charged;
- (v) for fixing rates, irrigation should be divided into A, B and C categories on the basis of the quantity and timeliness of supply. Lower rates may be fixed where on account of good rainfall, the demand for irrigation water is less or where the supply is inadequate and uncertain ;
- (vi) the general level of rates in a state should be such that, taken as a whole, the irrigation schemes do not impose any burden on the general revenues ;

The water rates for domestic and industrial supply are fixed on a volumetric basis. Water rates for industries should be uniform throughout the state or a region in the case of large states for the same category of industry and should be related to the capacity of the industry to pay.

The system of charging promotional water rates should be continued in the initial stages of the introduction of irrigation in a region with a view to induce the irrigators to make increased use of available irrigation facilities. However, the prolongation of such system beyond a reasonable period may not be desirable because there will be loss of revenue to the states and the farmers accustomed to low rates will be averse to the raise in the rate in future.

Many of the states have legislation to levy betterment charges to appropriate to the state whole or part of the unearned increase in the land values arising on the construction of an irrigation project and to recover the whole or part of the capital cost of the project from those who have been benefited. But due to the difficulties in assessing unearned increase in land values, legislation has not been implemented effectively in the majority of the states. It is suggested that if the difficulties in assessing the unearned increase in the value of the lands retard the realisation of the levy, the basis of the levy could be revised so as to link it with the capital cost of the project. In fact the Second Irrigation Commission has recommended that the betterment levy laws should be amended so that half of the capital cost of the irrigation project is recovered from the beneficiaries. Further, it is suggested that receipts from the levies could be treated as capital receipts earmarked for a special fund which may be used for the construction of other projects.