

CHAPTER III

LEGISLATIVE COMPETENCE OF THE PARLIAMENT AND STATES OVER FLOOD CONTROL IN INDIA

Flood control measures have two aspects—one is to prevent the occurrence of floods itself and the other is to minimise losses from floods. The former deals with the construction of levees, dams, embankments and reservoirs, *etc.*, and the second involves flood plain zoning. These two aspects relate to the exercise of two different kinds of powers. What is the distribution of legislative powers between the union and the states with regard to these two aspects is considered here.

The Constitution of India demarcates the legislative field of the union and the states. The union has exclusive power to legislate with respect to any of the matters enumerated in List I (Union List) of the Seventh Schedule. The states have exclusive power to make laws with respect to any matter enumerated in List II (State List). Both the Union and states have power to legislate with respect to the matters enumerated in List III (Concurrent List). The union is vested with the residuary powers. A perusal of the three legislative lists reveals that though flood control as such does not find a place in any of the lists, two forms of flood control, namely, drainage and embankments are specifically mentioned in entry 17 of List II. The entry reads as :

Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

The entry appears to relate to the first aspect of flood control and does not seem to relate to land use involved in flood plain zoning. The overriding union power under entry 56 of List I is with respect to regulation and development of interstate rivers and river valleys to the extent to which such regulation and development under the control of the union is declared by Parliamentary legislation to be expedient in the public interest. Therefore, primarily, legislative competence with respect to flood control measures in respect of both interstate rivers and intrastate rivers lies with the states. In fact the states which are prone to frequently recurring floods have enacted legislation to control floods and redistribute flood losses.¹ The only legislation enacted by Parliament under entry 56 of

1. See Chapter VI of the study, *infra*.

List I is the River Boards Act, 1956, to promote integrated and optimum development of interstate river valleys. The Act envisages the setting up of River Boards by the union government on request by the interested states or otherwise for development of interstate rivers and for arbitration of disputes which may arise incidental to the programme of development.² The Act envisages the boards to be expert bodies in irrigation, electrical engineering, flood control, navigation, water conservation and soil conservation. These boards are to be advisory bodies, their main function being to advise the state governments as regards the development and regulation of interstate rivers and river valleys within their jurisdiction. The main idea behind the provisions for establishment of such boards is that they would help to bring about, with the cooperation amongst the states, proper and optimum utilization of water resources of interstate rivers, promotion and operation of schemes for irrigation, water supply, drainage, flood control and development of hydro-electric power.³

As already stated, the Act does not give any authority to the union government to develop or regulate the water of interstate rivers or to control the activities of state governments in respect of these waters. Further, it embodies no policy or guideline regarding the utilization or control of these waters. The Act on the other hand contemplates the active cooperation of the states in the constitution and subsequent functioning of the river boards.⁴ Due to lack of requisite cooperation amongst the states no river board has been set up to-date by the union government.⁵

Apart from entry 56 of List I, the union may perhaps take steps to prevent floods by construction of dams, *etc.*, under entry 24 List I which speaks of "shipping and navigation of inland waterways, declared by Parliament to be national waterways, as regards mechanically propelled vessels."

In the United States the federal legislature has passed various enactments authorising construction of works on interstate rivers and their tributaries to prevent floods. In India there is no such legislation. However, the federal government in India is helping the states to construct works to prevent floods by giving financial and technical help and other assistance, though the execution of these works is primarily left with the states.⁶

The implementation of various works like dams, levees, embankments, reservoirs, *etc.*, may require acquisition of private land. "Acquisition and requisitioning of property" is in the Concurrent List under entry 42. Therefore, both centre and the states can legislate for acquisition of property. The basic statute in this regard is the Land Acquisition Act,

2. Ss. 4 and 22, The River Boards Act, 1956.

3. S. 13.

4. Ss. 13, 14.

5. *Report of the Ministry of Irrigation and Power* (1963-64) 24.

6. See S. N. Jain and Alice Jacob, "Centre-State Relations in Water Resources Development," 12 *J.I.L.J.* 1-25 (1970).

1894, under which land could be acquired by both the centre and the state for their respective purposes.

As regards flood plain zoning the states seem to possess exclusive power. Flood plain zoning involves restriction of land use and such power appears to be covered by entry 18 of List II which says "Land, that is to say, rights in and over land..." Flood plain zoning is a local problem and has to be tackled by the state governments as the local conditions differ from area to area. In the United States also flood plain zoning exclusively lies with the states. However, it may be better for the union government to prepare a model bill on flood control giving guidelines to the states as to the various methods of flood control and procedures for their implementation.

Apart from the above distribution of legislative power, the Union Parliament may legislate in the following two situations :

(i) The Union Parliament can derive legislative jurisdiction under article 249. Under this provision, if the Council of States declares, by a resolution supported by two-thirds of the members present and voting, that it is necessary or expedient in the national interest that Parliament should make laws with respect to matters in the State List specified in the resolution, it becomes lawful for Parliament to make laws for the whole or part of India with respect to that matter so long as the resolution stands. Such a resolution may remain in force for such period as mentioned therein but not exceeding one year; it can be renewed as many times as necessary but not exceeding one year at a time. The law made by Parliament in the State List under this provision shall cease to have effect six months after the resolution passed by the Council of States comes to an end except as respects things done or omitted to be done before the expiry of the said period.

What is important is the resolution of the Council of States that it is in the national interest that Parliament should legislate in State List matters. National interest is a standard wide enough to cover any matter which has incidence over the country as a whole. Whether flood control in the rivers of India has assumed such proportions as to require national effort on an all-India level is for the Council of States to decide. The Council of States represents the states and its decision, therefore, implies the consent of the states. Theoretically the power exists. However, in the prevailing political pattern which is reflected in the composition of the Council of States, it would be very difficult to get a resolution passed by two-thirds majority. Further, the spirit behind this provision is towards legislation of temporary duration only.

(ii) There exists another situation where Parliament can legislate on State List matters by the consent of the states. Under article 252, two or more states could empower the Parliament to legislate on matters enumerated in the State List if all the Houses of the Legislatures of those

states pass resolutions to that effect.⁷ Such a law applies only to states whose legislatures have already consented or which subsequently adopt the law. Any such legislation cannot be amended or repealed by the legislature of a state to which the law applies. This provision possibly could be made use of by contiguous states which need an integrated effort to control floods on an interstate river. Either each state enacts a separate law or if coordinated approach is desirable, if not essential, to solve flood problems common to them, they can approach the Parliament for a union legislation.

However, the Union Parliament's power under articles 249 and 252 has not been invoked much,⁸ though in theory the power exists under the Constitution.

7. Under an analogous provision of the Government of India Act, 1935, (S. 103) the Damodar Valley Corporation Act, 1948, was passed by the Dominion Legislature setting up the Damodar Valley Corporation for the multipurpose development of River Damodar.
8. The two instances in which the power under article 249 was exercised were in connection with the control of essential commodities and the problem of evacuee property interests. Similarly Parliament enacted the Estate Duty Act of 1953 and the Prize Competition Act of 1955 under article 252. For details see Alice Jacob, "Centre-State Governmental Relations in the Indian Federal System," *10 J.I.L.J.* 583 at 595-597 (1968).