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**BRAHMAPUTRA-BARAK RIVER BASIN ORGANIZATION:  
LEGAL AND CONSTITUTIONAL ISSUES**

**BY**

**SYED NAQVI**

**CONSULTANT**

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# 1. Objectives of study

The objectives of this Background Paper are first, to provide a concise legal analysis of the institutional basin management options in the Northeastern Region, with regard to the Brahmaputra and Barak river basins; and second, to provide a brief overview of the experiences with river basin management institutions in other parts of India and to draw conclusions for the Northeastern Region.

The Paper will thus describe and analyze the legal framework governing interstate institutional river basin management, with specific reference to a possible river basin organization in the Northeast. This will include a brief analysis of:

- The Constitution, laws, and regulations as they apply to Centre, state, and community rights and responsibilities in water resource management in the Northeast
- The institutional options for a river basin authority for the Northeast, with regard to possible decisionmaking powers, financing arrangements, and legal personality
- Institutional arrangements and experiences with past efforts at introducing interstate river basin organizations (such as the Damodar Valley Corporation, the Bhakra Beas Management Board, and the Cauvery River Authority).

# 2. Constitutional and legal provisions relating to water in India

In brief, the existing and relevant constitutional and legal provisions relating to water in India are as follows:

## 2.1 Provisions in the Constitution

### *Article 245: Extent of laws made by Parliament and the Legislature of States*

- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

### *Article 246: Subject-matter of laws made by Parliament and by the Legislatures of States*

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (In this Constitution referred to as the "Union List").
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
- (3) Subject to clauses (1) and (2), the Legislature of any State has the exclusive power to make laws for such State or any part thereof with respect to any of the matters

enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

#### ***Article 248: Residuary powers of legislation***

- (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

#### ***Article 262: Adjudication of disputes relating to waters of inter-State rivers or river valleys***

- (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

## **2.2 Provisions in Seventh Schedule**

Entry 56 of the Union List (List I): 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.

Entry 17 of the State List (List II): 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.

## **2.3 Legislative outcomes**

Under Article 262 of the Constitution, Parliament has enacted the Inter-State Water Disputes Act (1956).

Under Entry 56 of List I, Parliament has enacted the River Boards Act (1956).<sup>1</sup>

## **3. Legal framework for creating a river basin organization in India**

The legal provisions for constituting an interstate river basin organization in India are contained in the Constitution of India itself. The Constitution (26 November 1949) has vested specific powers in the Parliament of India for the "Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the

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<sup>1</sup> "River board" and "river basin organization" have equivalent meanings in India. The term "river board" was used by the Parliament of India when it enacted the River Boards Act in 1956, by virtue of the power vested in it under Entry 56 of the Union List in the Constitution; whereas, when the Government of India formulated the National Water Policy (2002), it used the term "river basin organization".

Union is declared by Parliament by law to be expedient in the public interest” (Entry 56 of List I of the Seventh Schedule; see section 2 above). This power vested in Parliament is supreme because the power vested in the state (legislatures) over water, by virtue of Entry 17 of List II, is specifically made subject to Entry 56 of List I. Parliament, within six years of adopting the Constitution, enacted a specific law governing the setting up of a river basin authority, the River Boards Act (1956).

Since the enactment of the law, no river board has been constituted under the act. The problem seems to lie in Section 4(1) of the act, by which the exercise of the power of the Government of India to establish a river board is dependent on a “request received from a State Government”. No state government has made such a request or is likely to. Thus the initiative taken by Parliament for putting in place a foundation for the setting up of river basin organizations has remained stillborn.

Even though the provisions of the River Boards Act could not be tested in the absence of the establishment of any river board under the act, it will be useful to analyze, later in this Paper, the provisions of the act, in order to draw out their intentions and objectives.

The Prime Minister of India, in a speech in his parliamentary constituency of Assam (21 November 2004), proposed the setting up of a river basin authority for the Brahmaputra modeled on the Tennessee Valley Authority in the United States. It is not clear whether the government would invoke its power under the River Boards Act or whether it would be proposing to set up a river basin organization by invoking its power under Entry 56. The few river boards that have been set up by the government have been established under Entry 56; if the proposed organization for the Brahmaputra was to be set up under the River Boards Act, the respective state governments would have to place a request with the government. No such request would be required if the government invoked its power under Entry 56. The institutions established by the government for setting up river boards under Entry 56 have generally proved unsatisfactory.

#### **4. Legal impediments to river board creation**

The framers of the Constitution of India had the foresight to make specific provisions in the Constitution itself for giving plenary power to Parliament for the regulation and development of interstate rivers. The powers given to the states with respect to the use of interstate river waters was made subject to the power of Parliament. Entry 56 (section 2.2 above) gives Parliament power for the “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”. Parliament enacted the River Boards Act by invoking its power under Entry 56.

An analysis of this act reveals that the primary reason for its failure is contained in a provision of the act itself, whereby the setting up of a river board for an interstate river is dependent upon a request from a state government. If such a request were received, and was supported by other states, a refusal by one riparian state to join the request would terminate the process. Thus, whatever the political compulsions were that led to the insertion of the provision in the act, the presence of such a provision has rendered the act impotent.

Another reason for the failure of the act is revealed when it is analyzed in conjunction with the Inter-State Water Disputes Act (also of 1956). If a river board for an interstate river was

constituted, it could be argued that a riparian state would have waived its rights, under the Inter-State Water Disputes Act, to seek the setting up of a water tribunal for the settlement of any water disputes with respect to the river. While the central government can constitute a river board only when so requested by the riparian states collectively, it is bound to constitute a water tribunal on a complaint filed by any one of the riparian states. It would be difficult to visualize, therefore, a river board and a water tribunal for the same interstate river, and it is not surprising that no river board has ever been constituted by the government under the River Boards Act, whereas five water tribunals have been constituted under the Inter-State Water Disputes Act. An element of “dispute” seems to be the primary reason for the government to act, and not the “regulation and development” of a river.

Another reason why the states may never request the government to constitute a river board under the River Boards Act is the apprehension that the state’s constitutional power over water under Entry 17 would become subject to the power of the river board. Also, whereas under the dispute resolution mechanism of the Inter-State Water Disputes Act a state would become entitled to a specific share in the interstate river water, under the River Boards Act a state can merely raise a dispute pertaining to an advice given by the board with respect to the interstate river. A further reason could be that, while a state obtains absolute right over the use of a share of interstate river water apportioned to it by a water tribunal, an agreement to be subjected to a river board may prevent the state from exercising absolute right over the river water that may have been apportioned to it.

## **5. Other impediments to river board creation**

It has been seen that that there are several legal reasons why the legal instruments to create river boards have not been used, as was intended by the Constitution. There are in addition political, economic, and institutional impediments that have prevented their formation.

### **5.1 Political impediments**

A review of the working of the Constitution of India over the last fifty years throws up a strange phenomenon with respect to the exercise of power by the central government and the state governments on the subjects over which the Constitution has given them exclusive legislative power under Article 246. Under this article the areas where the central government and the state governments can exercise their powers are stipulated. These are categorized as List I, also called the Union List, and List II, also called the State List. There is also a List III, which is called the Concurrent List, which contains subjects over which both the central government and state governments may exercise power, though a state government is no longer able to exercise its power for a subject on that list once the central government has done so. Disputes as to whether the central government or a state government has the legislative competence to exercise its power over a particular subject have occurred regularly and have quite often reached the Supreme Court of India, which has laid down tests for determining the matter. Where a power has been vested with either the central government or with a state government, the government ~~winning the decision~~ has rushed to exercise that power.

The only prominent exception is the subject of water. As already pointed out the central government, after enacting the River Boards Act, has not constituted a single river board under the act. Political factors have played a role here; for example, within the multiparty political structure of the country the political party ruling at the Centre may differ from that controlling

the state, making it difficult to reach agreement on such important issues as control of water resources.

## 5.2 Economic impediments

India is a vast country and in many cases developmental projects require infusion of large amounts of funds. At the national level, development of water resources may involve huge expenditure. An example is the proposal of the government, with the direction of the Supreme Court, to link the major rivers of India. This project, if carried out, will involve a funding of Rs. 5,600 billion, at 2002 prices. The proposal, though opposed by many states, would be of significant benefit to India, but it is highly unlikely that funding can be found for such an immense undertaking. Other projects are similarly compromised.

The Brahmaputra Board provides another example of how economic impediments can help explain why the legal instruments to create river boards have not been widely used. The 42nd report submitted by the Standing Committee on Energy to Parliament states: "In view of the insufficient funds at the disposal of Brahmaputra Board, the Committee has been apprised that prioritization of projects have been undertaken. Further, Brahmaputra Board has received only Rupees 99 crore during the last five years which were just sufficient to cover the salary part of the staff with a very little amount for taking up investigation of the projects."

## 5.3 Institutional impediments

As far back as in the year 1948, India created a river basin authority for the Damodar River. This authority was created under the Government of India Act (1945), the predecessor to the Constitution of India. Thereafter, under the provisions of the Constitution (Entry 56), as well as under other laws, a number of river basin organizations have been created, as shown in table 1.

**Table 1. River basin organizations in India**

Organization	Date of inception	Authority under which constituted
Tungabhadra Board	15 March 1955	Andhra State Act, 1953
Rajasthan Canal Board	19 December 1958	Government of India
Gandak Control Board	8 August 1961	Government of India
Mahi Control Board	27 November 1971	Government of India
Ganga Flood Control Board	18 April 1972	Government Resolution
Bansagar Control Board	30 January 1976	Government of India
Betwa River Board	10 April 1976	Act of Parliament
Brahmaputra Board	1 September 1980	Government of India
Narmada Control Authority	10 September 1980	Government of India
Bhakra Beas Management Board	12 December 1981	Punjab Reorganization Act, 1966
Upper Yamuna River Board	11 March 1995	Government of India

Despite the setting up of these river basin authorities over a span of more than fifty years, an admission of the fact that India does not have a successful model of a river basin organization

came from the National Commission for Integrated Water Resources Development Plan, which in its 1999 report recommended a model river basin organization. There is still institutional confusion over what that model might be. While there are proposals to base a new river basin organization for the Brahmaputra on the Tennessee Valley Authority (see section 2 above), the question arises as to whether this is the best model for India, given the fact that the relatively unsuccessful Damodar Valley Corporation was modeled on the Tennessee Valley Authority. With this in mind, other elements within central government have expressed preference for a strengthened Brahmaputra Board, rather than a new organization.

## 6. Designing a river basin organization for the Brahmaputra

As shown in the previous section, there is considerable divergence of opinion as to whether a river basin organization for the Brahmaputra should be based on (or even retain) the existing Brahmaputra Board, or should be modeled on, for example, the Tennessee Valley Authority, or should be a unique model based on the specific needs of the Brahmaputra basin. In any event it is certainly the case that, for it to succeed, the organizational arrangement should involve stakeholders at every level, as recommended by the 1999 National Commission.

Before suggesting the best model for a river basin organization for the Brahmaputra, some consideration should be given to the models the government has before it. Entry 56 of the Constitution specifically empowers the government to regulate and develop interstate rivers. Though the Brahmaputra Board Act does not expressly attribute its enactment to Entry 56, the language used in the preamble indicates that the act was created under that entry. Having enacted the Brahmaputra Board Act under Entry 56, the government's power to substitute the board with another river basin organization is not eroded.

Under Entry 56, Parliament has also enacted the River Boards Act, which is a second instrument that the government may utilize. Then there is the Damodar Valley Corporation model, which was in turn modeled on the Tennessee Valley Authority. The other models available have been mentioned earlier in this Paper.

For a river basin organization to be conceived for the Brahmaputra today, it is necessary to look around the world to see what are the best international practices that have been adopted, and have succeeded, in other countries. In 1999 the National Commission for Integrated Water Resources Development carried out a comprehensive study of river basin management and conceived a model river basin organization. This model can form the basis for the establishment of the proposed river basin organization in the Northeastern Region. The model proposes the institutional setup outlined in box 1.

### **Box 1. Institutional setup for proposed river basin organization (National Commission for Integrated Water Resources Development)**

The river basin organization may consist of a general council and a standing committee with a permanent secretariat.

#### **The general council may consist of:**

From each riparian state:

- Two minister representatives

- One leader of the opposition
- Three representatives of panchayats from each district in the basin (three presidents elected from the presidents at all levels, of which one shall be a woman and one a scheduled caste or scheduled tribe member)
- One representative of urban local bodies from each district in the basin
- Two representatives of water districts (by whatever name called) from each such district in the basin (elected from the presidents of the water districts, and of whom one shall be a woman)

Each river basin organization would co-opt five well-known experts on the environment, water law, health, economics, and sociology. It would also co-opt five representatives from other interest groups, for example nongovernmental and civil society organizations.

As some of the river basins are large, it would be necessary to form this body at the major subbasin level, with a small coordinating body for the basin as a whole.

As the general council would be a fairly large body, it would meet only once or twice a year and could only deal with questions that had already been considered and discussed in various forums. Most of the work should be done by a standing committee, which could be constituted in the following way:

**Standing committee:**

From each state:

- One state minister (who would be president by rotation for one or two years)
- One leader of the opposition
- Three representatives of panchayats (of which one shall be a woman and one a scheduled caste or scheduled tribe member)
- Three representatives of water districts (of which one shall be a woman and one a scheduled caste or scheduled tribe member)

All these would be elected from among the council members.

Note: If there are three riparian states, the standing committee would have 33 members.

Other models are possible; what is important is the representative character. The details would be decided by the National Water Resources Council before legislation is initiated.

The Secretariat of the river basin organization may be formed by restructuring the field offices of the Central Water Commission. It should be a multidisciplinary professional body. The secretariat would use the National Water Development Agency for its fieldwork. The cost of funding the organization may be shared equally between the Government of India and the participating states.

It should be the function of the river basin organization to collect data, disseminate them in local languages, formulate integrate master plans, and consider the proposals from constituent states on various issues, including project proposals in the basin and monitoring implementation of large projects. The organization would also be empowered to be the forum for mutual discussions among the states concerned, and would use conciliation to resolve differences, using the services either of its own members, as may be agreed, or enlisting the services of eminent persons, known for their impartiality and integrity. The river basin organization may execute projects, but only if the state government concerned requests the organization to take up the responsibility.

The decisions of the council and committee shall preferably be on the basis of consensus or unanimity; or, if this is not possible, on the basis of a majority from each of the states (that is, in a river basin organization of three states, in the standing committee at least 6 of the 11 members from each state should agree). Time limits may be fixed for arriving at decisions. If decisions are not taken within the prescribed time limit, it should be open for any state to take the matter to the central government for adjudication by a tribunal, or to the National Water Resources Council for discussion and settlement, depending upon the subject matter.

Thus, a river basin organization for the Brahmaputra and Barak rivers could be constituted by an act of Parliament by invoking power under Entry 56 of the Seventh Schedule of the Constitution, now that the central government itself has recommended the establishment of such an organization. Here it is pertinent to mention that the National Water Board set up a subcommittee in 1992 to prepare a policy paper on the setting up of a river basin organization. One of its recommendations was the establishment of a Brahmaputra valley authority.

## **7. Legislative implements available for river basin organization**

Under current legislation, outlined at the beginning of this Paper, it is only Parliament that has the power to create a river basin organization for an interstate river.

The options for creating, under current legislation, the institutional setup for a river board are indicated by the River Boards Act, a product of Entry 56; the other option for creating such a setup is under Entry 56 itself, as recommended by the National Commission for Integrated Water Resources Development in 1999, and largely supported by the Government of India in a recommendation of March 2004. However, given the wide definition available to central government under Entry 56 of List I - "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" - it is open to Parliament to develop the model of a river basin organization that it deems most appropriate, including, but not limited to, the most successful and best international practices.

## **8. Comparative analysis of three river basin organizations**

### **8.1 Damodar Valley Corporation**

The Damodar Valley Corporation emerged as the culmination of a number of attempts, over a century, to control the unpredictable Damodar River. The river basin covers an area of 25,000 square kilometers in the states of Bihar (now Jharkhand) and West Bengal.

The Damodar Valley has been ravaged by frequent floods of varying intensity. The first record of a major flood dates back to 1730; thereafter serious floods were recorded at regular intervals, the most devastating occurring in 1943. As a result, the governor of Bengal appointed a board of inquiry headed by the maharaja of Burdwan and with the noted physicist Dr Meghnad Saha as member. In its report, the board suggested creation of an authority similar to the Tennessee Valley Authority of the United States. The Government of India then appointed Mr W. L. Voorduin, a senior engineer of the Tennessee Valley Authority, to make recommendations for the comprehensive development of the valley. Accordingly, in August 1944, Mr Voorduin

submitted his report, entitled *Preliminary Memorandum on the Unified Development of the Damodar River*.

The memorandum suggested a multipurpose development plan designed to achieve flood control, irrigation, power generation, and navigation in the Damodar valley. Four consultants appointed by the Government of India examined it. They also approved the main technical features of the suggested scheme and recommended early initiation of construction, beginning with Tilaiya, followed by Maithon.

By April 1947 full agreement was practically reached between the three governments - the central government and the state governments of West Bengal and Bihar - on the implementation of the scheme, and in March 1948 the Damodar Valley Corporation Act was passed by the central legislature, requiring the three governments to participate jointly in the development of the Damodar Valley Corporation.

The Damodar Valley Corporation came into existence on 7 July 1948 as the first multipurpose river valley project of independent India. The original functions of the corporation were promotion, development, and operation of irrigation, water supply, drainage, hydroelectric and thermal power generation, flood control, navigation, afforestation, and control of soil erosion, taking into account public health and the agricultural, industrial, economic, and general well-being in the Damodar valley.

The Damodar valley project, as envisaged by the memorandum, was a multipurpose project that would afford flood control, generate 200 megawatts of power, and provide irrigation facilities to about 308,000 hectares in West Bengal by constructing eight dams and a barrage. However, it was later decided to have only four dams, at Tilaiya, Konar, Maithon, and Panchet, and a barrage at Durgapur under the control of the Damodar Valley Corporation. Subsequently, Tenughat dam has been constructed by the Government of Bihar, mainly for water supply. A flood absorption capacity of 1,867 million cubic meters could only be created, compared to the originally planned 3,580 million cubic meters, due to the reduced scope of the work. At present, in contrast to the broader functional scope envisaged originally for the Damodar Valley Corporation, the irrigation work has been handed over to the Government of West Bengal, the Tenughat project operates outside the purview of the corporation, and the navigation plans have hardly taken off. The corporation continues in existence only for the management and operation of all the projects under its control, excluding water and power distribution to consumers. Although the Damodar Valley Corporation was modeled on the Tennessee Valley Authority, the comparison no longer holds good.

## **8.2 Bhakra Beas Management Board**

### **8.2.1 Historical background**

The Bhakra-Nangal and Beas projects were originally joint ventures of the states of Punjab and Rajasthan. On the reorganization of Punjab on 1 November 1966, the Bhakra Management Board was constituted by the Government of India under Section 79 of the Punjab Reorganization Act (1966) for the administration, maintenance, and operation of the Bhakra-Nangal project with effect from 1 October 1967. The Beas project works, on completion, were transferred to the Bhakra Management Board and it was renamed the Bhakra Beas Management Board on 15 May 1976.

## **8.2.2 Board structure, functions, and financing**

The board is under the administrative control of the Ministry of Power and has been assigned administration, maintenance, and operation of the Bhakra and Nangal projects on the Sutlej River and the Beas project on the Beas River.

The board consists of a full-time chair, two full-time members (appointed by the Government of India), one representative each from the states of Punjab, Haryana, Rajasthan, and Himachal Pradesh, two representatives from the Government of India (one each from the Ministry of Power and the Ministry of Water Resources), and the commissioner (Indus).

The functions of the board are (a) to regulate the supply of the Sutlej, Ravi, and Beas waters to the states of Punjab, Haryana, Rajasthan, Delhi, and Chandigarh (Union Territory); and (b) to distribute power from the Bhakra, Nangal, and Beas projects to the states of Punjab, Haryana, Rajasthan, Himachal Pradesh, Jammu and Kashmir, and Chandigarh (Union Territory). The board distributes and maintains accounts in respect of power and waters of the rivers Ravi, Beas, and Sutlej to these partner states according to the agreements entered into or arrangements made by the partner states and orders passed by the Government of India. The board meets quite regularly for consideration and approval of various issues related to the functioning of the board. The releases of water into the canals are discussed and decided in the monthly Technical Committee meetings of the board, which are attended by the chief engineers and members from partner states and state electricity boards.

Under the provisions of Section 79 of the Punjab Reorganization Act, the partner state governments and the state electricity boards are required to provide necessary funds to the board to meet all the expenses required for the discharge of its functions. The revenue expenditure debitable to the Irrigation Wing is financed by partner states from their own resources in agreed ratios. The revenue expenditure of the Power Wing is partly met out of the receipts realized from the common pool consumers and partly by the partner state electricity boards from their own resources.

## **8.2.3 Review of the board**

It is seen that the Bhakra Beas Management Board was established under the provisions of the Punjab Reorganization Act, pursuant to the agreements entered into between the states prior to the reorganization of Punjab. By these agreements, Punjab and Rajasthan had agreed to the apportionment of the waters of the Ravi and Beas and the projects on these rivers. It must be noted that this board was neither constituted under the Rivers Boards Act nor under Entry 56 of the Constitution of India. Therefore, the circumstances and the purpose for which this board was constituted afford little assistance for any proposed body for managing any other river basin. However, the Bhakra Beas Management Board is an exemplary model in that it successfully manages the water resources of some of the most important rivers of India. One unique feature of the board is absence of any minister of central or state government on the board.

## **8.3 Cauvery River Authority**

### **8.3.1 Historical background**

The States of Karnataka and Tamil Nadu are the main riparian states of the Cauvery River. Disputes between these states dates back to the 18th century. Two agreements were executed

between the states, one in 1892 and the other in 1922. In the 1970s disputes arose again, with Karnataka contending that the agreements had expired. After negotiations failed the Government of India, on the direction of the Supreme Court, in response to a petition filed by the farmers of Tamil Nadu, constituted the Cauvery Water Disputes Tribunal. The tribunal issued an interim order directing Karnataka to release 205 billion cubic feet of waters to Tamil Nadu per year. Disputes arose again with the allegations by Tamil Nadu that Karnataka had failed to implement the interim order of the tribunal. Tamil Nadu moved the Supreme Court for the implementation of the interim order. Before the Supreme Court hearing the Government of India, which had been arrayed as party by Tamil Nadu, agreed to constitute an authority for the implementation of the interim order of the tribunal. It was in these circumstances that the Cauvery River Authority came to be constituted in 1998.

The Government of India constituted the authority by exercising its powers under Section 6A of the Inter-State Water Disputes Act. The authority was established with a limited purpose – for the implementation of the interim order of the tribunal, until the tribunal issued its final order in the form of an award.

### **8.3.2 Structure of Cauvery River Authority**

The Cauvery River Authority is a two-tier body, comprising the authority itself and a Monitoring Committee. The authority is constituted with the prime minister of India as the chair and the chief ministers of the four riparian states as members. The Monitoring Committee is composed of the secretary-in-charge of the ministry dealing with water resources, the chief secretaries of the riparian states or their nominees, the chair of the Central Water Commission, one officer not below the rank of chief engineer representing each riparian state, and the chief engineer, Central Water Commission, as the member secretary. The finances of the authority were to be met by the Government of India initially and thereafter by the states or as decided by the tribunal.

### **8.3.3 Review of Cauvery River Authority**

It must be noted that the Cauvery River Authority is not a river basin authority as is usually meant by the term. The notification constituting the authority refers to it as a “scheme” for the implementation of the interim order of the Cauvery Water Disputes Tribunal, under Section 6A of the Inter-State Water Disputes Act. It is a semipolitical body for the implementation of the interim order of the tribunal only. It has no power to develop river basin resources. It is also to be noted that the authority has not been created either under the River Boards Act or under Entry 56 of the Constitution of India. In summary, it has little value as a precedent for setting up a river board on the Brahmaputra.

## **9. Comparative analysis of the three river basin organizations**

The Damodar Valley Corporation was created under the Government of India Act (1945); the Bhakra Beas Management Board was created under the Punjab Reorganization Act (1966); and the Cauvery River Authority was created under Section 6A of the Inter-State Water Disputes Act (1956). None of these organizations was created either under the River Boards Act (1956) or under Entry 56. The institutional structures of these organizations differ fundamentally, as do the purposes for which they were created – the Damodar Valley Corporation was created primarily for flood control, the Bhakra Beas Management Board was created in view of the agreements arrived at between the state governments of Punjab, Rajasthan, and Haryana for the

management of the Bhakra and Beas rivers, and the Cauvery River Authority was created for the implementation of the interim orders of the Cauvery Water Disputes Tribunal.

## 10. Conclusions

This Paper has demonstrated that the power to establish a river basin organization for the Brahmaputra-Barak basin is vested entirely in the Parliament of India. This power is not subject to any limitation except that any regulation and development of an interstate river or river valley should be in the public interest. There is little doubt that the proposed river basin organization for the Brahmaputra-Barak basin is in the interest of the people of the Northeastern Region of India.

The power to create a river basin organization is contained within the Constitution itself. This is extremely significant as it allows exercise of power by Parliament without having to invest itself with that power. It has also been shown that the power vested in Parliament is extremely wide-ranging and would allow the establishment of any model of river basin organization. Thus, it would be completely legal and constitutional for the Parliament of India to adopt any successful model of organization from any part of the world.

As has been shown, there is a clear constitutional power and mandate for establishing a river basin organization for an interstate river. The fact that such an organization already exists for the Brahmaputra does not erode the power of Parliament to establish another organization for the basin. The enactment and the existence of the River Boards Act (1956) for the establishment of river boards for interstate rivers does not preclude Parliament from establishing a river board organization for the Brahmaputra-Barak basin. This can, in fact, be done without recourse to the River Boards Act.

It is not within the scope of this Paper to frame the parameters of a possible river basin organization for the Brahmaputra-Barak basin. It is clear, however, that there are no legal or constitutional constraints on or impediments to the establishment of any model of organization for the basin, as long as it is demonstrated to the people of the region that the proposed organization is primarily in their interest.

Several instances of the establishment of river basin authorities on interstate rivers in India have been mentioned in the Paper. However, establishment of a comprehensive and successful river basin organization has eluded India. Perhaps the proposed organization for the Brahmaputra-Barak basin will succeed in laying down a foundation and a precedent as a model river basin organization for the other interstate rivers of India.