

*Settlement of International and Inter-State Water Disputes in India* by B.R. Chauhan, N.M. Tripathi Pvt. Ltd., Bombay, (1992), pp. XVIII + 346, Rs.350/-.

Interstate water disputes have always posed severe threats to the very sustenance of life. India, a federal state with interstate rivers faces population explosion and is comparatively at its initial stages of urban and industrial development. Demand for water always outstripping supply, disputes over water inevitably shoot up. From the very inception of the federal idea, the problem of inter state water disputes has crept into Indian polity. The topic assumes great importance in the wake of the recent developments of the Cauvery dispute.

There is a clarion call for development of better legal principles and efficient administrative measures to resolve these interstate water disputes amicably. Indian literature has been scanty on the subject. In this unhappy state of affairs the book under review provides relief. The book is divided into four main parts, namely, importance and scope of the problem and the emerging concepts in part 1, the international arena in part 2, the problems concerning interstate rivers in India in part 3 and the epilogue in part 4.

In chapter 1 the author has brought to light the significance of water for the very existence of life on earth. Pointing out the problems related to international and interstate river disputes the author calls for co-related research not only to tackle but successfully resolve these disputes taking into account the humanitarian aspects also.

Meticulously written in brief, the chapter 2 gives a vivid picture of the study at hand, and presents the scheme of the co-related topics. The first two chapters are more introductory than informative. Chapter 3 has effectively dealt with the concepts of international river, international drainage basin, international water resources system, international water disputes and interstate water disputes.

In chapter 4 the author has extensively dealt with the various theories invoked by the contesting states in the disputes. Firstly the author enters a caveat. Pointing out the distinction between *lex lata* and *lex ferenda*, the author emphasises that one should have precise knowledge of the law actually in force and establish that the suggestions made are not the prevailing norms or principles. Each theory is identified, examined and explained. This is done through analysis of relevant decisions of water

dispute tribunals, Indian, foreign and international. Author's own views reflect a humanitarian approach.

One may however disagree with the author when he argues that the 'equitable utilisation theory' and the 'equitable apportionment theory' are two different theories. The context of emergence of the theories – one in interstate water dispute and the other in international water law – are not based on firm grounds. The claims and the nature of dispute being similar, it is quite difficult to appreciate the difference. The equitable apportionment entitles every riparian or basin state a fair share in water which will depend on various factors and the circumstances of each case. The equitable utilization theory found in the Helsinki Rules 1966, has identified and enumerated the various factors. Undoubtedly the latter is more precise and clear than the former. Equitable distribution is the underlying principle in both the theories. The author points out the disadvantage of the apportionment theory in offering a slower process of determining share and in not being conducive to the optimum utilization concept. It is felt that the utilisation theory is only an improvement on the apportionment theory.

It is commendable that the author has given the full text of the relevant provisions of both Helsinki Rules of 1966, and the rules adopted by the International Law Association.

The basic problems faced by the contesting parties at the time of settlement of the dispute and sharing of benefits of water resources are discussed in chapter 5. Problems in laying down the order of priority for different uses of water in a disputed basin is elaborately discussed. The author exposes the difficulty in laying down a strict order of priority for all times. However, one agree with Chauhan when he says, "Where the domestic use, as basis of life, is indispensable, it shall have preference over the other uses".

Chapter 6 examines the sources of law for settlement of international water disputes. The juristic works, contributions of regional and international organisations, judicial decisions and arbitral awards have been sufficiently dealt with. But while evaluating the substantive merit of the Helsinki Rules, the author fails to elaborate the felt deficiencies. It is suggested that the treatment of the subject would be better if the sources are dealt in the order of priority as provided under Article 38 of the Statute of the International Court of Justice.

Chapter 7 exposes the nature and settlement of water disputes between India and its neighbouring states. The disputes with Pakistan, Nepal and

Bangladesh are dealt under separate heads. Analysing the standstill agreements made with Pakistan the author demonstrates the injustice meted out to India. Considering all the factors like, irrigated areas in the basin of the states, population, pre-partition utilization of water and total length of the rivers running in India, the author estimates that India should get atleast 47% of the total water against 20 - 25% under the agreement. With no major controversy, the case of Brahmaputhra involving China and Bangladesh has received a brief treatment.

In chapter 8, the author has painstakingly set forth every river system in India with minute details. Figures and maps of Indian river system would have enhanced the intelligibility of the subject.

Chapter 9 handles the arrangements regarding interstate and interprovincial rivers prior to the adoption of the Constitution of India 1950. This chapter is a comprehensive consolidation of the historical events which demonstrates the absence of any significant water law till Government of India Act 1858. The systems under the Government of India Act 1915-1919 and the Government of India Act 1935 have been adequately discussed in this chapter. The author has pointed out the impact of the federal idea on the river systems. Discussion on the induction of river valley concept into the Constitution is pertinent.

In chapter 10, the author presents the relevant constitutional provisions relating to inter-state rivers. He points out that the provisions as it stands, leaves scope for avoidable litigation between riparian states. A 'harmonious construction' of the entries under union list, state list and concurrent list may enable meaningful resolution of the different aspects of the problem. The relevant provisions of the River Boards Act 1956 and the Interstate Water Disputes Act 1956 are also discussed here.

The sources of law pertaining to the field of interstate water disputes in India are discussed in chapter 11. Juristic works, statutes, commission reports and judicial decisions and awards are dealt with under separate heads. Chapters 9 and 10 give a brief outline on statutory provisions as well as major awards of the tribunals. Relevant provisions of the Indian Easement Act 1882 are also supplemented.

A comparative study of selected federal states and a few non-federal states is given in chapter 12. Treaties between states, the special institutions, powers of the government, relevant legislation and judicial decisions with regard to these countries are discussed.

Chapters 13 - 17 deal with some principal river disputes. In all these chapters the pattern has been to describe the river basin involved and the genesis of the dispute. The issues are identified and the findings of the tribunal are set in. The verdict of the tribunal is also evaluated. There are appendices to each chapter containing the various inter-state water agreements and order of tribunals.

Chapter 18 deals with minor river water disputes. Disputes over the Tungabhadra and Palar rivers and the disputes in sharing of the costs and benefits of the Musakhand Dam Project on Karamnasa river and Bajaj Sagar Dam Project on Mahi river are briefly stated.

An appraisal of the problems of interstate river disputes in India is given in chapter 19. An extensive analysis and study of the various sources of law and practice in this regard is beautifully summarised in this chapter. While evaluating the prevailing dispute resolution mechanism the author has not ruled out the role of the Supreme Court.

The author has made constructive suggestions for better resolution of water disputes. He emphasises that the legal aspects of the issue should dominate the political and water management aspects. His suggestion to develop a convention compelling the central government to refer the dispute to the tribunal without unreasonable delay, is praiseworthy. In the concluding chapter, the author expresses his hopes, views and concerns on the subject.

Language of the book is simple. Topics are imaginatively divided. The table of cases and bibliography cater to the needs of the readers. The book also contains a very useful index. A table of statutes would have surely enhanced its utility. Similarly, maps of India and discussion on the National Water Policy 1987 would have been useful.

Printing is good and readable except for a few avoidable mistakes. Price is a little high. The book is of immense help especially to people associated with administration, irrigation and law. Undoubtedly the book is a welcome addition to any law library.

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