RIVER BASIN ORGANIZATION FOR RIVER BRAHMAPUTRA-BARAK BASIN

LEGAL AND CONSTITUTIONAL ISSUES

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This paper was commissioned as an input to the Study on Natural Resources, Water and the Environment Nexus for Development and Growth in Northeast India
1. **OBJECTIVE OF THE PAPER**

The objective of this Paper is to, one, provide a concise legal analysis regarding the institutional basin management options in the North Eastern States, with regard to the Brahmaputra and Barak River Basins and, two, to provide a brief overview of the experiences with river basin management institutions in other parts of India and to draw conclusions for the North Eastern States.

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

- The Constitution, laws and regulations as they apply to Center, State and Community rights and responsibilities in water resources management in the North East;

- The institutional options for a North East wide river basin authority, with regard to possible decision making powers, financing arrangements and legal personality
Institutional arrangements and experiences with past efforts at introducing inter-state river basin organizations (such as Damodar Valley Authority, Bhakra Beas Management Board and the Cauvery River Authority).

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

Brief description of the existing and relevant Legal and Constitutional provisions in India:

- Article 245: Extent of laws made by the 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 1 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 clause (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 matter 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 a such matter is a matter enumerated in the State List.

Article 248: Residuary power 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).

- Entry 56 of the Union List: 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: 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.

- Under Article 262, the Parliament has enacted the inter-State Water Disputes Act, 1956.

- Under Entry 56, the Parliament has enacted the River Boards Act, 1956.
3. **River board & river basin organization**

River Board and River Basin Organization in India is understood to mean one and the same. The term River Board has been used by Parliament of India, when Parliament of India 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.

4. **Legal framework for creating river basin organization in India**

The legal provisions for constituting an Interstate River Basin Organization in India is contained in the Constitution of India itself. The Constitution of India (November 26, 1949) has vested specific powers on 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 Union is declared by Parliament by law to be expedient in the public interest” by virtue of Entry No.56 of List I in the VII Schedule to Article 246. This power vested in the Parliament of India is supreme because the power vested in the State (Legislatures) over Water, by virtue of Entry 17 List II in the
VII Schedule to Article 246 is specifically made subject to Entry No.56 of List I in the VII Schedule to Article 246. The Parliament of India, within six years of adopting the Constitution of the Independent India, enacted a specific law for the constitution of the River Basin Authority, namely, the River Boards Act, 1956 (Act 49 OF 1956) on September 12, 1956. This alacrity shown by the Parliament of India in enacting a path breaking law for the constitution of River Basin Organization was, unfortunately self defeating as demonstrated by the fact that since its enactment in the year 1956, not a single River Board has been constituted under this Act – the culprit? Section 4 (1) of the Act. By virtue of this Clause, 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 ever, either made any such “request” nor is any State Government likely to make any such “request” (Harmon Doctrine!) and the result has been that the Act has remained a dead letter. A path breaking initiative taken by the Parliament of India for putting in place a foundation for the setting up of the RBOs, almost half a century back, remain stillborn.

Even though the provisions of the River Boards Act, 1956 could not be tested in absence of the constitution of any River Board under the Act, it will be useful to analyze the
provisions of the Act, later in the paper and draw out the intention and objective of the Act.

In a speech by the Prime Minister of India recently in Assam, (November 21, 2004) which is his Parliamentary Constituency, he has proposed the setting up of the “TVA for Brahmaputra”. It would be interesting to see whether the Government of India would invoke its power under the River Boards Act, 1956, or whether it would be proposing to set up an RBO by invoking its power under Entry 56. It would be worthwhile to mention here that Government of India has set up few River Boards, not under the River Boards Act, 1956, but under Entry 56. Whereas, if the proposed “TVA for Brahmaputra” is set up under the River Boards Act, 1956, the respective State Governments will have to place a request with the Government of India, no such request of the State Governments would be required if the Government of India invokes its power under Entry 56. Whereas the institutional set up under the River Boards Act is known, though have not been tested yet, the institutions established by the Government of India for setting up some of the River Boards, under Entry 56, have been quite unsatisfactory.

5. Why the legal instruments to create River Basin Boards and RBOs have not been used?
The framers of the Constitution of India had the foresight to make specific provisions in the Constitution itself for giving a plenary power to the Parliament in the matter of the regulation and development of the inter-state rivers. The powers given to the States with respect to the use of the inter-state river waters, has been made subject to the power of the Parliament. Entry 56 gives Parliament the 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, 1956, by invoking its power under Entry 56. An analysis of this Act reveals that the primary reason for the failure of this Act is contained in the Act itself, whereby the constitution of River Board for an inter-state river has been left to the State to so request. In an inter-state river, one of the riparian State’s refusal to join in the request of the other riparian States would defeat the entire enactment. Thus, whatever the political compulsions were, which led to the insertion of the provision in the Act for the State’s request as a pre-requisite for the constitution of a River Board, such a provision has rendered the Act as impotent. Another reason for the failure of the River Boards Act, 1956, is revealed when one analyzes the River Boards Act, 1956 conjunctively with the Inter State Water Disputes Act, also enacted in
1956 (Act 36 of 1956) (August 28, 1956). If a River Board for an inter-state river was constituted, could it be said that a riparian State would have waived its rights under the Inter-State Water Disputes Act, 1956, that of seeking the constitution of a Water Tribunal for the settlement of any water disputes with respect to the very same inter-state river for which a River Board has been constituted? This seems to be the position. Whereas the Central Government can constitute a River Board only when so requested by the riparian States collectively, the Central Government is bound to constitute a Water Tribunal on the complaint filed by any one of the riparian State. It is not difficult to see that there cannot be at the same time a River Board and a Water Tribunal for the same inter-state river. This analysis affords a strong reason why no River Board has ever been constituted by the Government under the River Boards Act, 1956, whereas about five Water Tribunals have been constituted by the Government under the Inter-State Water Disputes Act, 1956. An element of “dispute” seems to be the primary reason for the Government to act and not the “regulation and development of river”. Another reason that 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 once a River Board is constituted under the
River Boards Act, 1956. Yet another reason could be that whereas under the dispute resolution mechanism under the Inter-State Water Disputes Act, 1956 a State would become entitled to a specific share in the inter-state river water, but under the River Boards Act, 1956, a State can merely raise a dispute pertaining to an advice given by the Board with respect to the inter-state river. A further reason could be, that, whereas on a apportionment of a share in an inter-state river water by the Water Tribunal, a State gets an absolute right over the use of that share of water, but an agreement to be subjected to the River Board may prevent the State from exercising absolute right over the river water which may have been apportioned to it.

6. Are there any further legal impediments – Political, Economic, Institutional?

We have seen that that there are several legal reasons why the legal instruments to create River Basin Boards and RBOs have not been used - as were intended by the Constitution. In addition to those reasons, there are Political, Economic and Institutional impediments which have prevented the formation of the River Boards and the River Basin Organizations in India.

POLITICAL IMPEDIMENTS?
A review of the working of the Constitution of India for the last 50 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 the Central Government and the State Governments exclusive power under Article 246 to legislate. Under Article 246, the Constitution has divided the subjects over which the Central Government and the State Governments can exercise its power. These are called List I, also called the Union List and List II, also called the State List. There is also List III, which is called Concurrent List, which contains subjects over which both the Central Government as well as the State Governments may exercise powers, but once the Central Government exercises its power on a subject in the Concurrent List, the State Governments cannot exercise any power over that subject.

With respect to the exercise of the powers by the Central Government and the State Governments, quite often, disputes have occurred between the Central Government and the State Governments with respect to whether it is the Central Government or the State Government which has the legislative competence to exercise its power over a particular subject. These disputes have quite often reached the Supreme Court of India, which has laid down the tests for determining whether it is the Central Government or the State Government which has the power to make laws with
respect to the subject matter in dispute. These tests are, legislative competence, pith and substance, doctrine of severability, etc. This analysis demonstrates that where a power has been vested with either the Central Government or the State Government, the Governments have rushed to exercise that power. *The only prominent exception is the subject of water.* We have seen that the Central Government has been specifically vested with the power to make laws with respect to “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”. And we have also seen that the Central Government, after enacting an impotent River Boards Act, 1956, has not constituted a single River Board under this Act. The reason is not very difficult to decipher. Political compulsions may have compelled the Central Government to enact an impotent River Boards Act, 1956 and political compulsions have prevented the Central Government from constituting any River Boards for the inter-state rivers. The political compulsions could be due to the multi-party political structure of the country where there may not always be the same political party ruling at the Center and the States at the same time. This prevents the Central Government from imposing upon a State, a decision which the State is unwilling to accept.
ECONOMIC IMPEDIMENTS?
India is a vast country and developmental projects require infusion of enormous amounts of funds. Development of Water resources require huge expenditure to be incurred. A ready example is the proposal of the Government of India – with the direction of the Supreme Court of India – to link major rivers in India. This project, if carried out, will involve a funding of Indian Rupees.560000 Crores, at year 2002 price level. Without, for the moment taking into consideration the fact that many States have opposed the proposal, if the proposal in the present or modified form, is carried out, it will wipe out the water problem in India for ever. The question is, who will fund this gigantic project? Similarly there are other identified water projects in the country which have been conceived and which would require substantial funding, without which neither the Central Government nor the State Governments would be able to undertake these water projects. Thus, economic impediment is one of the relevant factors, besides legal and political impediments, why the legal instruments to create River Boards and RBOs have not been widely used. The Brahmaputra Board is a ready example. A quote from the 42nd. Report submitted by the Standing Committee on Energy to the Parliament is worth noting. At paragraph 8.8 of Chapter VII of the Report, the Report says “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”!

INSTITUTIONAL IMPEDIMENTS?
As far back as in the year 1948, India created a River Basin Authority for River Damodar. 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 of India (Entry 56) as well as under the other laws, a few RBOs have been created, *viz*, Tungabhadra Board (constituted on March 15, 1955 under the Andhra State Act, 1953), Bhakra Beas Management Board (constituted on December 12, 1981 under Punjab Reorganization Act, 1966), Ganga Flood Control Board (constituted in 1972 by a Government Resolution), Betwa River Board (constituted on April 10, 1976 under an Act of the Parliament), Bansagar Control Board (constituted on January 30, 1976 by the Government of India) Brahmaputra Board (constituted on September 1, 1980 by the Government of India) Narmada Control Authority (constituted on September 10, 1980 by the Government of
India) Rajasthan Canal Board (constituted on December 19, 1958 by the Government of India) Gandak Control Board (constituted on August 8, 1961 by the Government of India) Mahi Control Board (constituted on November 27, 1971 by the Government of India) Upper Yamuna River Board (constituted on March 11, 1995 by the Government of India). Despite these River Basin Authorities, constituted over a span of the last 50 years, an admission of the fact that India does not have a successful model of an RBO came from National Commission for Integrated Water Resources Development Plan, which in its Report submitted in the year 1999, recommended a Model RBO. Even this recommendation has not yet been accepted, is demonstrated by the speech of the Prime Minster, as stated earlier in this paper, where he has recommended a “TVA for Brahmaputra River”. Now the TVA Model of RBO is more than half a century old. The question that arises is that if “DVC” modeled on “TVA” has not been successfully implemented in India, then why are we still talking of applying the TVA model today?. Thus, in India, one is still not sure of a model Model of RBO- a case of Institutional Impediment?

7. What would be different in the case of Brahmaputra RBO? Or – what would have to be different for it to succeed? What kind of RBO would be possible in the Brahmaputra Basin?
Whereas the Minister for Water Resources talks of strengthening the existing Brahmaputra Board, which was constituted by an Act of the Parliament in the year 1980, the Prime Minister has promised to the people of the State of Assam a “TVA for River Brahmaputra”. There is a thus a lack of uniformity in the thinking of the Government of India on the issue of the development of River Brahmaputra (and River Barak). This lack of uniformity can be attributed to the lack of application of mind on part of the Government on the issue of the Institutional requirements of an RBO, despite the fact that in 1999 the National Commission for the Integrated Water Resources Development Plan has conceived of a Model RBO. The Government will do well to understand that neither strengthening of the existing Brahmaputra Board nor an RBO Model based on the TVA Model for Brahmaputra would be the correct approach for the regulation and development of the Brahmaputra. We have seen that the TVA Model has not been successfully implemented in India in as much as TVA has successfully worked in the USA. The Brahmaputra Board Model has also not worked successfully – else the Prime Minister would not have been talking of a “TVA for Brahmaputra”.

In the case of an RBO for the Brahmaputra for it to be different and for it to succeed, there should be a provision
for the involvement of the stake holders at every level, as recommended by the 1999 National commission.

Before suggesting a right model of RBO for Brahmaputra, lets us see what are the models of RBO the Government has before it. The Government has before it Entry 56 in the Constitution, which specifically empowers the Government to “regulate and develop an inter-state river”. Even though the Brahmaputra Board Act, 1980, does not expressly attribute this enactment to Entry 56, the language used in the Preamble to this Act leaves no manner of doubt that this Act was created under Entry 56 of the Constitution. Having enacted Brahmaputra Boards Act, 1980, under Entry 56, the power to substitute the Brahmaputra Boards Act, 1980 with another RBO is not denuded. And the Prime Minister has already promised a “TVA for River Brahmaputra”. Under Entry 56, Parliament has enacted the River Boards Act, 1956. This is a second instrument that the Government may utilize. Then there is the DVC Model, which was in turn modeled on TVA. The other models available have been mentioned earlier in this paper. For a RBO to be conceived for the Brahmaputra today, one must look around the world to see what are the best international practices which the other countries have adopted and succeeded. As a matter of fact the 1999 National Commission has undertaken a comprehensive Study with
respect to River Basin Management and has conceived a Model RBO. This Model RBO can furnish the basis for the establishment of the proposed RBO for the Northeast Region. The Model RBO as conceived by the National Commission proposed the following Institutional setup:

- **The RBO 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 from each State
    - One leader of the opposition
    - Three representatives of Panchayats from each of the District in the Basin (Three Presidents elected from the Presidents at all the levels of which one shall be a woman and one a Scheduled Tribe/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 women)
- Each RBO would co-opt five well known experts in environment, water law, health, economics and sociology. It will also co-opt five representatives from other interest groups like NGOs and activists.
➢ Since some of the rivers basins are large ones. It will be necessary to form this body at the major sub-basin level, with a small coordinating body for the basin as a whole.

➢ Since the **General Council** will be a fairly large body, it can meet only once or twice a year and can also deal only with questions that are already well-considered and discussed. It is suggested that most of the work should be done by done by a Standing Committee, which could be constituted in the following way:

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**STANDING COMMITTEE:**

From each State:

➢ One State Minister (who will be President by rotation for a year a two).

➢ One Leader of Opposition

➢ Three Representatives of Panchayats (of which one shall be a women and one SC/ST)

➢ Three Representatives of water districts (of which one shall be a women and one SC/ST)

➢ All these will be elected from among the Council members).

Note: If there are three riparian States, the Standing Committee will have to have 33 members.
Other models are possible; what is important is the representative character and the details have to be ironed out in the National Water Resources Council (NWRC) before a legislation is initiated.

The Secretariat of the RBO may be formed by restructuring the field offices of the Central Water Commission (CWC). It should be a multidisciplinary professional body. The Secretariat would use National Water Development Agency (NWDA) also in its field work. The cost of funding the RBO may be shared equally by the Government of India and the participating States.

It shall be the function of RBO to collect data, disseminate them in local languages, formulate integrative master plans and consider the proposals from constituent States on various issues, including project proposals in the basin monitor implementation of large projects. The RBO would also be empowered to be the forum for mutual discussions among the States concerned and also to resort to conciliation to resolve the differences—either by its own members, as may be agreed, or by enlisting the services of eminent persons, known for their impartiality and integrity. Suggestion have been made that RBO should
execute projects, but this may be done only if the State Government concerned requests the RBO to take up the responsibility.

- The decisions of the Council and Committee shall preferably be on the basis of consensus or unanimity and if this is not possible, on the basis of majority from each of the States (that is, in an RBO of three States, in the Standing Committee at least six members from each State should agree). Time limits may be fixed for arriving at the decisions. If decisions are not taken within the prescribed limit, it should be open for any State to take the matter to the Central Government for adjudication by a Tribunal or 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 can be constituted by an Act of the 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 the River Basin Organizations. Here, it would be pertinent to mention that the National Water Board had set up a Sub-Committee in 1992 to prepare a Policy Paper on the setting up of the River Basin Organization. The Sub-Committee prepared a Policy Paper in
1992. One of its recommendation was the establishment of Brahmaputra Valley Authority.

8. **What are the options for different instruments that an RBO would have at its disposal within the current legislation?**

Under the current legislation, which has been explained at the beginning of this paper, it is only the Parliament which has the Power to create the RBO for an inter-state river.

The options for creating Institutions under the current legislation are under the River Boards Act, 1956 which itself has been created under Entry 56, where the Institutional setup for a River Board has been indicated and the other option is under Entry 56, as recommended by the 1999 National Commission.

Under the River Boards Act, 1956, which itself was enacted under Entry 56, the Institutional setup for the River board has been indicated in the Act. Whereas, under Entry 56, the power for creating the Institutions that a RBO would have at its disposal is wide and unfettered, in view of wide language of Entry 56, i.e. “Regulation and development of inter-state river and river valley”, it is open to the Parliament to conceive of any Model of RBO, including and
not limited to adopting the successful and best international practices.

Another possible structure of the River Basin Organization as per the recommendation of March 24, 2004, of the Government of India is in line with the recommendation of the National Commission for Integrated Water Resources Development Plan, 1999, constituted by the Government of India.

9. Review of the three RBOs and its comparative analysis

I. THE DAMODAR VALLEY CORPORATION

Damodar Valley Corporation emerged as a culmination of attempts made over a whole century to control the wild and erratic Damodar river. The river spans over an area of 25,000 sq. kms covering the states of Bihar (now Jharkhand) & West Bengal.

The Damodar Valley has been ravaged frequently by floods of varying intensities and the first of the major recorded flood dates back to 1730. Thereafter serious floods occurred at regular intervals, but it was the flood of 1943 that left the worst devastation in its wake. As a result, the Governor of Bengal appointed a Board of Inquiry headed by the Maharaja of Burdwan and the noted physicist Dr. Meghnad Saha as
member. In their report, the Board suggested creation of an authority similar to the Tennessee Valley Authority (TVA) of United States of America. The Government of India then appointed Mr. W.L. Voorduin, a senior engineer of the TVA to make recommendations for comprehensive development of the valley. Accordingly, in August, 1944, Mr. Voorduin submitted his "Preliminary Memorandum on the Unified Development of the Damodar River".

Mr. Voorduin’s "Preliminary Memorandum" suggested a multipurpose development plan designed for achieving 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 Voorduin’s scheme and recommended early initiation of construction beginning with Tilaiya to be followed by Maithon.

By April 1947, full agreement was practically reached between the three Governments of Central, Bengal and Bihar on the implementation of the scheme and in March 1948, the Damodar Valley Corporation Act, 1948 was passed by the Central Legislature, requiring the three governments – the Central Government and the State Governments of West Bengal and Bihar (now Jharkhand) to participate jointly for the purpose of building the Damodar Valley Corporation.
The Corporation came into existence on the 7th July, 1948 as the first multipurpose river valley project of independent India. The original functions of DVC were: promotion, development and operation of irrigation, water supply, drainage, hydro-electric and thermal power generation, flood control, navigation, afforestation, control of soil erosion, public health, agricultural, industrial, economic and general well being in the Damodar Valley.

The DVC is headed by a Chairman and two Members appointed by the Government of India.

The Damodar Valley Project as envisaged by Mr. Voorduin was a multi-purpose project to afford flood control, to generate 200 MW power and to provide irrigation facilities to about 0.308 Million hectares in West Bengal by constructing eight dams and a barrage. However, it was later decided to have only four dams, namely, Tilaiya, Konar, Maithon and Panchet and a barrage at Durgapur under the control of DVC. Subsequently, Tenughat dam has been constructed by the Government of Bihar mainly for the water supply. The flood absorption capacity of 1867 MCM could only be created as against the originally planned figure of 3580 MCM due to reduced scope of work. At present as against the broader scope envisaged originally for functioning of DVC, the irrigation has been handed over to the Government of West Bengal, the Tenughat Project operates outside the purview of DVC and the
navigation has hardly taken off. DVC continues to be in existence only for the management and operation of all the projects under its control excluding water and power distribution to consumers.

DVC was created by the Government of India under the Government of India Act, 1945.

DVC was modeled on TVC. The comparison does not seem to hold anymore.

II. THE BHAKRA BEAS MANAGEMENT BOARD

Historical Background
The Bhakra-Nangal and Beas Projects were originally the joint ventures of the States of erstwhile Punjab and Rajasthan. On the reorganization of Punjab on 1st. November, 1966, 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 Bhakra-Nangal Project with effect from 1st. of October 1967. The Beas Project works on completion were transferred to Bhakra Management Board and it was renamed as Bhakra Beas Management Board (BBMB) on 15th. of May 1976.
Administrative Control
The Board is under the administrative control of the Ministry of Power and has been assigned Administration, Maintenance and Operation of Bhakra and Nangal Projects on river Sutlej and Beas Project on river Beas.

Board Structure
The board consists of a whole time Chairman, two whole time Members (appointed by Government of India) and one representative each from the States of Punjab, Haryana, Rajasthan and Himachal Pradesh and two representatives from Government of India (one each from Ministry of Power and Ministry of Water Resources with Commissioner (Indus) Member of the Board..

Functions
The functions of the Board are: (a) to regulate the supply of Sutlej, Ravi and Beas waters to the States of Punjab, Haryana, Rajasthan, Delhi and Chadigarh (Union Territory) and (b) to distribute power from Bhakra Nangal and Beas projects to the States of Punjab, Haryana, Rajasthan, Himachal Pradesh, Jammu & Kashmir and Chadigarh (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 as per the agreements* (see separate note on 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/State Electricity Boards.

Financing of the Board
Under the provisions of Section 79 of the Punjab Reorganization Act, 1966, 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 Irrigation Wing is financed by partners States from their own resources in the agreed ratios. The revenue expenditure of 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.

**Review of the Board:** It is seen that the Bhakra Beas Management Board was established under the provisions of the Punjab Reorganization Act, 1966 and pursuant to the agreements entered into between the States prior to the reorganization of Punjab. By these agreements, Punjab and Rajasthan had agreed for the apportionment of the waters of
Ravi and Beas and the projects on these rivers. It must be noted that this Board was neither constituted under the Rivers Boards Act, 1956 nor under Entry 56 of the Constitution of India. Therefore, the circumstances and the purpose for which this Board was constituted affords little assistance for any proposed body for managing any other river basin. Otherwise, in terms of the management, it is said that his is one of the best managed body in the country, managing the water resources of some of the important rivers of India. One unique feature of this Board is absence any Minister either of the Central or State Government on the Board.

III. THE CAUVERY RIVER AUTHORITY

Historical Background:

The States of Karnataka and Tamil Nadu are the main riparian States to River Cauvery. The 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 seventies, disputes arose again with Karnataka contending that the agreements have expired. After negotiations failed the Government of India, on the directions of the Supreme Court of India in a Petition filed by the farmers of Tamil Nadu, constituted the River Cauvery Waters Disputes Tribunal. The Tribunal issued an interim order directing Karnataka to release 205TMC of waters to Tamil Nadu in a year. Disputes arose again on the allegations by Tamil Nadu that Karnataka
has 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 the Government of India, which was arrayed as party by Tamil Nadu, agreed to constitute an Authority for the implementation of the interim order of the Tribunal. It is in these circumstances that the Cauvery River Authority came to be constituted in 1998.

The Government of India has constituted the Authority by exercising its powers under Section 6A of the Inter State Waters Disputes Act, 1956. The Authority has been established with a limited purpose - for the implementation of the interim order of the tribunal, until the Tribunal issues its final Order (Award).

Structure of Authority.
The Authority is a two tier body. It has an Authority and under the Authority there is a Monitoring Committee. The Authority is constituted with the Prime Minister of India as the Chairperson and the Chief Ministers of the four riparian States as Members. The Monitoring Committee is composed of Secretary-in-charge of the Ministry of dealing with Water Resources, the Chief Secretary of the Riparian States of their nominees, Chairman Central Water Commission, One Officer each, not below the rank of Chief Engineer representing each
Riparian State to be nominated by each State and Chief Engineer, Central Water Commission as 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.

**Review of the Authority:** It must be noted that the Authority is not an authority as is understood in case of a River Basin Authority, because this is not a River Basin Authority. 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, 1956. It is a semi-political body for the implementation of the interim order of the Tribunal only. It has no power to develop the river basin resources. It is also to be noted that the Authority has not been created either under the River Boards Act, 1956 nor under Entry 56 of the Constitution of India. The Authority can afford little precedent value.

10. **Comparative analysis of the three river basin organization**

The Damodar Valley Corporation (DVC) was created under the powers vested in the Government of pre-independent Government of India Act, 1935. The Bhakra Beas Management Board (BBMB) was created under the Punjab Reorganization
Act, 1966. The Cauvery River Authority (CRA) was created under Section 6-A of the Inter State Water Disputes Act, 1956. It must be noted that none of these so called “River Basin Organizations” were created either under the River Boards Act, 1956 or under Entry 56. The Institutional structures of these RBOs are completely different from each other. The purpose for which each of these Authorities were created are also completely different from each other - Whereas DVC was created primarily for Flood Control, BBMB 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 Cauvery River Authority was created for the implementation of the interim orders of the Cauvery Water Disputes Tribunal (Water Court).

For the convenience of the reader, a copy of the respective legal provisions mentioned in the paper are annexed at the end of the paper.

11. Conclusion
This Paper has demonstrated that the power to establish River Basin Organization for the Brahmaputra-Barak Basin vest entirely with 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 public interest. There is no manner of doubt that the proposed RBO for the Brahmaputra-Barak Basin is in the complete interest of the people of the North East region of India.

It has been stated in the Paper that the power to create an RBO is contained in the Constitution itself. This is extremely significant as it allows exercise of power without having to invest itself with the power. It has also been stated that the said power is extremely wide to conceive and establish any model of RBO. Thus, it would be completely legal and constitutional for the Parliament of India to adopt any successful model of RBO from any part of the world.

It has been stated in the paper that there is a clear constitutional power and mandate for establishing an RBO for an interstate river. It has also been demonstrated that the fact that a RBO for Brahmaputra already exists, does not denude the power of the Parliament to establish another RBO for Brahmaputra. It has further been demonstrated that the enactment and the existence of the River Boards Act, 1956 for the establishment of the River Boards for interstate rivers does
not preclude the Parliament from establishing an RBO for the Brahmaputra-Barak River Basin. What is most significant is that this can be done without recourse to the River Boards Act, 1956.

It is not within the scope of this Paper to frame the parameters of a possible RBO for the Brahmaputra-Barak River Basin. But having explained and analyzed the legal and constitutional provisions for the establishment of an RBO for an interstate river, it can safely be said that there are no legal and constitutional constrains or impediments for the constitution and the establishment of any model of RBO for the Brahmaputra-Barak River Basin, as long as it is demonstrated to the people to the Northeast Region that the proposed RBO is primarily for their interest.

Several instances of the establishment of River Basin Authorities on interstate rivers in India have been mentioned in the Paper. However a comprehensive RBO has eluded India. Perhaps the proposed RBO for Brahmaputra-Barak River Basin will succeed in laying down a foundation and a
precedent of a Model RBO for the other interstate rivers of India.

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