

INDIA'S INTER-STATE RIVER WATER DISPUTES: CONFLICT RESOLUTION MECHANISMS AND POSSIBLE SOLUTIONS

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Abstract: *India is an enormous nation with countless rivers that traverse from one state to another, and some even to other neighbouring countries. In a country that is largely dependent on monsoonal rainfall for domestic, irrigational, industrial and other needs of its citizens, inter-state disputes have cropped up from time to time regarding the varying demand for river water supply and usage. Often it is observed that such disputes pester for as long as two decades with no solution in sight, due to a plethora of reasons prevalent in the country. Long running disputes like Ravi-Beas and Kaveri that have been in litigation for 31 and 27 years respectively have also displayed the inability to amicably settle the dispute between the riparian states. As rivers are considered sacred and worshipped in Indian culture, our civilisation has always attached an emotional value to them. But this takes a dangerous turn when the politicians of the riparian states exploit people's sentiments for electoral gain.*

This paper examines the feasibility of the existing legal framework in India for dispute resolution and the damage caused by adverse politicisation of these sensitive issues. A brief explanation of river water management practices implemented in foreign countries is provided to elucidate the feasibility of those practices in India. The paper also recommends long due reforms in the present dispute resolution mechanism along with river water management practices that are implemented globally to avoid these disputes in the long run.

Index Terms – Rivers, Inter-state, Dispute, Resolution, Mechanism.

I. Introduction:

Article 262 of the Indian Constitution provides for parliamentary legislation for the adjudication of inter-state river water disputes. A result of this provision was the enactment of the Inter-State River Water Disputes Act in 1956 aimed at providing mechanism for conflict resolution of river water disputes. This approach has been successful in the Tribunal awards for Krishna, Godavari and Narmada disputes but failed to resolve the Kaveri and Mahadayi issues until very recently. However, this sadly does not signal the end of litigation by the states in the latter instances due to unnecessary political overtones that prolonged the already delayed judgement. Therefore it is the need of the hour for a robust dispute resolution mechanism to be brought about for seamless adjudication upon these disputes in the future.

II. How the present legal mechanism to settle disputes for river water sharing can be made feasible?

The two biggest criticisms of the Inter-State River Water Disputes Act, 1956 are the delays occurring at every stage and adjudication as the mandated solution for the disputes¹. Right from the establishment of the tribunal under the Act to the delivery of the judgement, inordinate delays are visible in the proceedings and its aftermath. Also, there is no provision for alternative dispute resolution means like mediation and conciliation in the Act and therefore resorting to adjudication in all disputes irrespective of the gravity of the situation only aggravates the issues.

Section 5 of Inter-State River Water Disputes Act, 1956 provides that the Tribunal constituted by the Central Government shall investigate the matter referred to it and hand out a report to the Government within a span of three years failing which the Government shall extend the time period to another two years. However, the Act does not fixate any time limit for adjudication by Tribunal and the publishing of the report by the same authority. This lacuna coupled with the non-final and non-binding nature of the Tribunal award had caused inordinate delay in the Kaveri and Ravi-Beas issue where litigation has been running since 27 and 31 years respectively². Such long running water sharing disputes are not only time consuming, expensive and harmful for the party states and their economies but also enable the politicians to easily exploit the regional feelings of the people for garnering votes in elections.

Section 3 of Inter-State River Water Disputes Act, 1956 mandates that if the Central Government is satisfied that a legal dispute has arisen between two or more states regarding the sharing of river water, it shall refer the same to a specially constituted Tribunal for adjudication. It is clear on a preliminary reading of the provision that the Act has not provided for alternative dispute resolution mechanisms like mediation and conciliation in the Act. The lack of such alternative measures not provided by the Act led to drawn out litigation battles waged by the riparian states over river water sharing, which may not have arisen or worsened if adjudication was not the only dispute resolution mechanism by default.

Ms. Uma Bharati, the Minister of Water Resources, River Development and Ganga Rejuvenation introduced a Bill that seeks to amend the Inter-State River Water Disputes Act, 1956, in Lok Sabha in April 2017³. The salient features of the Bill include the establishment

¹ Ramaswamy R. Iyer, *Inter-State Water Disputes Act 1956: Difficulties and Solutions*, 37 Economic & Political Weekly 2907, 2907-10 (2002).

² Objects & Reasons, Inter-State River Water Disputes (Amendment) Bill, 2017

³ HT CORRESPONDENT, *CENTRE MOVES BILL FOR SINGLE TRIBUNAL ON INTER-STATE WATER DISPUTES*, HINDUSTAN TIMES, MARCH 22, 2017, [HTTPS://WWW.HINDUSTANTIMES.COM/INDIA-NEWS/CENTRE-MOVES-BILL-FOR-SINGLE-TRIBUNAL-ON-INTER-STATE-WATER-DISPUTES/STORY-8GHOHJZTIXDDDFXFTSBILN.HTML](https://www.hindustantimes.com/india-news/centre-moves-bill-for-single-tribunal-on-inter-state-water-disputes/story-8GHOHJZTIXDDDFXFTSBILN.HTML)

of the Inter-State River Water Disputes Tribunal i.e. a single national tribunal for adjudication, Disputes Resolution Committee aiming at alternative dispute resolution mechanisms, and the maintenance of data bank and information at national level regarding river bodies in India.

Recommendations:

1. Disputes Resolution Committee: Under the 1956 Act, if the Central Government is satisfied that a legal dispute has arisen between two or more states regarding the sharing of river water, it shall refer the same to a specially constituted Tribunal for adjudication within a year of receiving the complaint⁴.
The 2017 Bill replaces this provision and requires the Central Government to first establish a Disputes Resolution Committee for resolving any inter-state water dispute amicably. The Committee must submit the report to the Government within a year which can be extended by six months.
2. Composition of the Committee: There exists ambiguity in Section 4A(1) of the 2017 Bill as it does not expressly mention the manner and method of appointment of the members of the Committee by the Central Government and it just provides for appointment to be from relevant fields as deemed fit.
3. Inter-State River Water Disputes Tribunal: Section 4A(4) of the Bill proposes that in case the dispute is not resolved by the negotiations by the Dispute Resolution Committee, then the matter shall be adjudicated upon by the Inter-State River Water Disputes Tribunal, a single national tribunal appointed to resolve inter-state river water disputes among riparian states.

Section 4D of the Bill provides for multiple benches of the Tribunal and clause 2 specifies that the bench shall sit at New Delhi or any other place deemed fit by the Chairperson of the Tribunal. Section 4 also provides for all existing tribunals to be dissolved and the water disputes that are pending adjudication before such existing tribunals to be transferred to the newly formed tribunal.

4. Composition of the Tribunal: The Tribunal shall consist of a Chairperson, Vice-Chairperson and not more than six nominated members chosen from the incumbent judges of the Supreme Court or of a High Court by the Chief Justice of India⁵. Section 5A of the Bill provides for the appointment of assessors i.e. two experts (atleast Chief Engineers) serving in the Central Water Engineering Service to advise the bench in proceedings, by the Central Government.
5. Time limit for decision making: Under the 1956 Act, any Tribunal has to render the decision on a dispute within a period of three years which is extendable to a maximum of two years⁶. If the Central Government refers the matter again to the Tribunal then it has to submit its report within a year which can be extended if deemed necessary⁷. Therefore, the maximum time limit for issuing orders is four and a half years.

Under the 2017 Bill, the ISRWD Tribunal has to decide on a dispute within a period of two years which is extendable by a maximum of one year⁸. The Central Government may extend the submission of report by the Tribunal for a maximum of six months⁹.

6. Decision of the Tribunal: The 1956 Act mandates that the Central Government must publish the decision of the Tribunal in the Official Gazette¹⁰. The decision shall be final and binding upon the parties and has the same force as that of an order of the Supreme Court after publication¹¹.

The 2017 Bill however removes the necessity of publication by the Government of the decision in the Official Gazette and yet the Tribunal decision is to be final and binding on the parties involved in the dispute and shall carry the same force as that of a Supreme Court order¹².

7. Maintenance of data bank and information: The 1956 Act mentions that the Central Government shall maintain a data bank and information system at the national level for each river basin¹³. The amended Section 9A of the 2017 Bill provides for the appointment or authorisation of an agency by the Government to maintain a data bank and information system at the national level for each river basin.

Though the amended Bill goes a step ahead to establish an agency at national level, it still fails to mention important details such as the constitution, composition, powers and functions of such agency which are crucial in the smooth functioning of such an important authority. Therefore, the same must be addressed through another legislation to realise and gain the benefits from such a monitoring agency.

III. What can be done to curb the endless litigation between states for sharing of river water?

Integrated Water Resource Management (IWRM) is an internationally accepted practice that aims at preventing transboundary water sharing disputes between states and countries arising primarily from lack of development of the water body and co-operation various actors dependent on the same. IWRM sets out to reconcile multiple, competing uses for water, with legitimacy attained through public participation, and with coordination and technical competence assured through specialised basin entities or agencies where they exist.¹⁴

⁴ Section 3, Inter-State River Water Disputes Act, 1956

⁵ Section 4B, Inter-State River Water Disputes (Amendment) Bill, 2017

⁶ Section 5(2), Inter-State River Water Disputes Act, 1956

⁷ Section 5(3), Inter-State River Water Disputes Act, 1956

⁸ Section 4A(2), Inter-State River Water Disputes (Amendment) Bill, 2017

⁹ Section 4A(2), Inter-State River Water Disputes (Amendment) Bill, 2017

¹⁰ Section 6, Inter-State River Water Disputes Act, 1956

¹¹ Section 6, Inter-State River Water Disputes Act, 1956

¹² Section 6, Inter-State River Water Disputes (Amendment) Bill, 2017

¹³ Section 9A, Inter-State River Water Disputes Act, 1956

¹⁴ *Integrated Water Resource Management: A New Way Forward*, WORLD WATER COUNCIL, 5, http://www.worldwatercouncil.org/sites/default/files/Initiatives/IWRM/Integrated_Water_Resource_Management-A_new_way_forward%20.pdf (last accessed Sept. 20, 2018).

The Dublin Principles of 1992 which initially propounded this method has become the guiding principles for Integrated Water Resource Management. Therefore it is believed that IWRM is expected to combine the following principles¹⁵ -

Principle 1: Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment.

Principle 2: Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels.

Principle 3: Women play a central part in the provision, management and safeguarding of water, and

Principle 4: Water has an economic value in all its competing uses and should be recognized as an economic good.

The Global Water Partnership (GWP) was established in 1996 to foster IWRM and it provided a definition for the same as, "IWRM is a process which promotes coordinated development and management of water, land and related resources in order to maximise the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems."¹⁶ Further, before exploring the suitable facets of the Integrated Water Resource Management practice in India, the case studies, one each at international and national level would illustrate the worth of the implementation of the same in our country.

International Case Study: Mekong River Basin, Asia

The Mekong basin is divided into the Upper Mekong containing China, where it originates and the Lower Mekong containing Cambodia, Laos, Thailand and Vietnam where it drains into the ocean. The Council of Ministers of the Mekong River Commission (MRC) is the apex authority for integrated management of the Mekong basin and constitutes the four countries of the Lower Mekong along with representatives of China and Myanmar¹⁷. The Council has adopted IWRM-based basin development strategy for joint development efforts occurring at the national, provincial and district levels. Implementation happens through national, provincial and district authorities, including regulation and infrastructure development at basin and sub-basin levels, or in thousands of small watersheds, such as water quality regulation, flood protection measures, local water supplies, small-scale hydropower and irrigation dams etc¹⁸.

The four Lower Mekong countries have set up National Mekong Committees as a platform for cross-sectoral dialogue. The committees include members from the public sector, private sector and civil society where dialogue among stakeholders mould the actions that contribute to development and management of water resources at each level. Hundreds of dams built to harness hydropower production are currently being planned and built on the Mekong. A recent instance is the proposed construction of two hydropower projects by building the mega-dams on the Mekong River, despite a recent order by the government to halt new dam investments following a deadly breach in July that killed 35 people and displaced thousands¹⁹. The present situation poses a definitive challenge to the integrity and efficiency of the Commission and the impact of these developments would shape IWRM practices for time to come.

National Case Study: Tamil Nadu, India

Several facets of IWRM are being implemented in the Vaigai basin of Tamil Nadu, one of the 12 important basins of Kaveri river, like the participation of stakeholders ranging from authorities to citizens aiming at holistic river basin management especially during deficient rainfall and a decision support system called THANNI ('water' in Tamil) that includes an information system to maximise water use subject to agricultural, irrigational and policy constraints. The working of the support system interface is also being conducted in Tamil to facilitate easier communication among the locals.

Problems in the basin are conflicts between stakeholders due to multiple uses of water, involvement of multiple institutions in various aspects of basin planning and management, upstream or downstream conflicts and cross-sectoral conflicts resulting from rapidly increasing urbanisation even as traditional water demands remain²⁰. The future poses major challenges for allocation of water and the development of a co-operative framework to make decisions based on full stakeholder participation as the present system provides decision-makers a tool for policy and scenario analysis and stakeholders a focal point for discussions.

Recommendations:

The implementation of the IWRM approach must be done through all possible levels by involving all concerned state and non-state stakeholders right from the Union Government to the Panchayat and includes the protection, preservation and development of the watersheds to the river basin areas. It must involve a comprehensive framework of policies and laws, decision makers from various sectors, usage of latest data and technology for river basin management etc. The Inter-State River Water Disputes Act, 1956 mentions that the Central Government shall maintain a data bank and information system at the national level for each river basin²¹. The amended Section 9A of the Inter-State River Water Disputes Amendment Bill, 2017 provides for the appointment or authorisation of an agency by the Government to maintain a data bank and information system at the national level for each river basin.

Though the amended Bill goes a step ahead to establish an agency at national level, it still fails to mention important details such as the constitution, composition, powers and functions of such agency which are crucial in the smooth functioning of such an important authority. It also must be made sure that this agency exists at national, state and local levels and in case of ongoing water disputes, the agency must constitute a working body with duly appointed officers from riparian states aiming at amicable resolution of the issue. Though a

¹⁵ *About Integrated Water Resource Management*, Global Water Partnership – South Asia, June 11, 2018, <https://www.gwp.org/en/gwp-SAS/ABOUT-GWP-SAS/WHY/About-IWRM/>

¹⁶ *Integrated Water Resource Management*, Technical Advisory Committee Background Papers No. 4, GLOBAL WATER PARTNERSHIP, 22, <https://www.gwp.org/globalassets/global/toolbox/publications/background-papers/04-integrated-water-resources-management-2000-english.pdf> (last accessed Sept. 18, 2018).

¹⁷ *IWRM-based Basin Development Strategy 2016-2020: For the Lower Mekong Basin*, MEKONG RIVER COMMISSION, 21, <http://www.mrcmekong.org/assets/Publications/strategies-workprog/MRC-BDP-strategy-complete-final-02.16.pdf> (last accessed on Sept. 11, 2018)

¹⁸ *IWRM-based Basin Development Strategy 2016-2020: For the Lower Mekong Basin*, MEKONG RIVER COMMISSION, 39, <http://www.mrcmekong.org/assets/Publications/strategies-workprog/MRC-BDP-strategy-complete-final-02.16.pdf> (last accessed on Sept. 16, 2018)

¹⁹ Hannah Ellis-Petersen, *Laos dam collapse: work continues on huge projects despite promised halt*, The Guardian, August 21, 2018, <https://www.theguardian.com/world/2018/aug/21/laos-dam-collapse-work-continues-on-huge-projects-despite-promised-halt>

²⁰ *Integrated Water Resource Management*, Technical Advisory Committee Background Papers No. 4, GLOBAL WATER PARTNERSHIP, 37, <https://www.gwp.org/globalassets/global/toolbox/publications/background-papers/04-integrated-water-resources-management-2000-english.pdf> (last accessed Sept. 18, 2018).

²¹ Section 9A, Inter-State River Water Disputes Act, 1956

provision for such an agency is appreciatory, in a country as vast as India with many river bodies and river banks needing immediate protection and sustainable development there is a dire need for a separate legislation that mandates and regulates the working of the agency. The policy makers must also ensure that the principles and guidelines of the said monitoring agency must follow the internationally accepted and enforced standards for IWRM. The authorities must also establish research teams with experienced personnel that shall set out to make comparative studies amongst countries that have implemented IWRM practices most successfully which avoided transboundary water sharing disputes in the long run. These guidelines followed, policies framed and decisions implemented by the respective authorities would greatly improve the water sharing situation among riparian states in future India.

IV. How to effectively insulate the adjudication of water sharing disputes from unwarranted and adverse politicising of the issue?

Though the Inter-State River Water Disputes Act, 1956 has mandated the constitution of a special tribunal for the adjudication of the water disputes arising between riparian states, inadvertent delay has been witnessed right from the establishment of the tribunal to rendering of the award. Since the 1956 Act did not prescribe the time limit for adjudication of a dispute, the disputes have a protracted run in the courts of law which only aggravates the existing issues between the riparian states and worsens the situation for farmers and other parties dependent on the river water supply for their livelihood. Apart from being time consuming and expensive litigation, these perennial disputes also provide an opportunity for the politicians of the riparian state parties to exploit the sentiments of the people which would in turn help them in garnering electoral votes.

It has also been observed that it had become standard practice for politicians to defy with the directions or instructions of the Tribunal in order not to be criticised by the opposition and seen in bad light by the citizens for sidelining the state's needs out of the litigation²². The Kaveri dispute is a prime example of how far a water dispute issue can be politicised and exploited thereby leading to civil unrest and protests by other independent organisations or dissenting people within the riparian state itself. Often this adverse politicisation gets manifested in perturbing consequences like city-wide or state-wide bandhs which are brought about by political parties and supported by independent outfits where all schools, colleges, universities and offices are closed, all forms of public and private transportation is halted and general life completely comes to a standstill.²³ There have also been instances of such situations worsening due to the mischief mongers who vandalise public property such as city buses and attack non-local people, as a result of which the State Government is forced to ramp up security for protection of citizens and even fire tear gas at activists to disperse them.²⁴

Therefore, it is the need of the hour to implement a mechanism which would enforce a system of negotiation between the contending states for amicable resolution of the dispute to prevent incessant litigation or at least speed up the process of litigation that would significantly reduce the damage caused by the unwanted politicisation of the same.

Recommendations:

Section 4A of the 2017 Bill states that, the Central Government may set up a Dispute Resolution Committee to amicably resolve the river water sharing dispute between the riparian states without pursuing the same in the Inter-State River Water Disputes Tribunal. If the Bill comes into force, then this mechanism would ensure that the dispute would not run into decades of adjudication and instead would be resolved in a shorter period of time where the taxpayer's money would not be wasted in drawn out litigations too. In case the dispute is resolved in the early stages of negotiation, then there would not be any unwarranted litigation between the riparian states. This would in turn make sure that the politicians had no incentives to politicise the issue and gain immensely from the regional sentiments which would ultimately reflect in the electoral verdict.

The time limit for rendering the judgement under the 1956 Act by any Tribunal was a period of three years that was extendable to a maximum of two years²⁵. If the 2017 Bill is enforced, then the ISRWD Tribunal has to decide on a dispute within a period of two years which is extendable by a maximum of one year²⁶. This significant reduction in time allotted to Tribunal for decision making coupled with the Tribunal's award carrying the same power as of a Supreme Court judgement can have a profound impact upon the persisting problem of politicisation as the politicians would not be encouraged to meddle with the sensitive issue of water sharing and hence, prevent more damage from occurring.

V. Conclusion:

With regard to the situations reflected and aforementioned observations made upon these are the recommendations in brief:

- Establishment of a single national tribunal and enactment of Inter-State River Water Disputes (Amendment) Bill, 2017 will usher in a robust legal mechanism for settling disputes.
- Practices like Integrated Water Resource Management implemented thru legislations and administrative machinery will curb the litigation between states and sustainably develop the river basins.
- Timely adjudication by the tribunal along with the binding nature of its orders will insulate the adjudication from politicisation of the dispute.

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²³ MAYA SHARMA, *KARNATAKA BANDH SHUTS BENGALURU, IT FIRMS HIT, PM MODI IS TOLD: 10 FACTS*, NDTV, SEPTEMBER 09, 2016, [HTTPS://WWW.NDTV.COM/KARNATAKA-NEWS/AMID-KARNATAKA-BANDH-FIRING-AT-CAUVERY-DAM-IT-FIRMS-CLOSED-10-FACTS-1456599](https://www.ndtv.com/karnataka-news/amid-karnataka-bandh-firing-at-cauvery-dam-it-firms-closed-10-facts-1456599)

²⁴ Firstpost Staff, *Cauvery Issue as it happened: 350 arrested for vandalising public property; Bengaluru police vow to restore normalcy*, Firstpost, September 13, 2016, <https://www.firstpost.com/india/kaveri-issue-live-its-not-about-tamil-nadu-or-karnataka-say-experts-as-bengaluru-police-restore-normalcy-3001224.html>

²⁵ Section 5(2), Inter-State River Water Disputes Act, 1956

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