

Water disputes in India: Constitutional Approach

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Introduction

Water is the essence of life.

“Water covers more than 70% of the surface of the earth. It fills the oceans and the rivers; it resides underground and is also present in the air which we breathe. Great civilisations have risen where water was plentiful and have fallen, when the supply of water failed. Great cities have been born on the rivers and many have vanished when the rivers dried up. Today, more than ever, water is both slave and master to the people. It has more uses than can be counted on the fingers, and it is utilised in almost every activity of the civilised man. But one important fact about water is, that while our demand for it is increasing, it is not possible to increase the supply. Viewed in this light, water must be preserved and managed properly.”¹ Statistics of fresh water indicate that only 3 % of the water available in the world is fresh water and which can be used for irrigation, drinking and other purposes including industrial purposes. Hence fresh water found in rivers, lakes, ponds, ice caps, etc is of limited quantity. It is this shortage which creates the disputes over water because which water supply does not increase use of fresh water is constantly increasing due to increase in world population and increase in agricultural activities and industrialisation.

Thus "The river water disputes of the modern world are becoming seeds of unending quarrels between states. They are creating not love and compassion but waves of disharmony and distrust amongst people of neighbouring areas. In our own country, there are many rivers which have become sources of disharmony amongst states. We have disputes with Pakistan on one side and Bangladesh on the other over utilisation of river waters. In addition, in the country itself many rivers which are carriers of life's sustaining waters have become constant sources of friction and dispute between states. Every state tries to utilise as much water as it can, irrespective of the content of awards, judicial pronouncements and mutual settlements. They necessarily lead not merely to inter-state disputes but also affect the integrity and integration of India. In spite of the gravity of the situation and its importance, so far, comparatively speaking, fewer treatises than the problem warrants, have been written by scholars. While there is plethora of legislation on several aspects, there are fewer laws made in regard to river water disputes.”²

During the British rule, the inter-state or inter-province water disputes were settled through the Central government because the irrigation projects were virtually under the Central government. However, in 1937, under the Government of India Act of 1935, irrigation was transferred within the sole legislative jurisdiction of the provinces. The Central government was not responsible for irrigation and water development in various states. The concern of the Centre was to settle inter-state water disputes through mutual negotiations leading to an agreement. The matter was kept

¹ Bakshi P.M.(1999) Article 262 and Inter-State Disputes Relating to Water, Background Paper for National Water Commission.

² Rao, Dooda Srinivasa (1998) Inter-State Water Disputes in India : Constitutional and Statutory Provisions and Settlement Machinery Deep Publications , ISBN : 8176291595

out of the federal courts and was to be settled by the Governor General with the assistance of an expert commission under this rule. For instance the Governor General of India appointed the Indus Commission in 1941 to settle the dispute between Punjab and Sind over sharing the Indus water. The Commission applied the principle of equitable apportionment to settle the dispute. India upon adopting its Constitution, left irrigation to be state subject and hence water is a state subject and the state "governments at present virtually exercise full control on planning, development, regulation, distribution and control of water flowing through their territories. However, the Central government coordinates all irrigation and power projects through the Ministry of Agriculture and Irrigation (previously known as the Ministry of Irrigation and Power); the Central Water and Power Commission attached to the Ministry of Agriculture and Irrigation; the Central Water Commission with the coordination of State governments; and the Central Board of Irrigation and Power, which conducts research on various subjects related to irrigation and have stations in different parts of the country.

Further, the Central government also indirectly influences the settlement of disputes among various states by means of controlling the federal funds. In theory, the Constitution has listed irrigation as a state subject yet it is the Centre, which practices a dominant role through its financial power in settling inter-state disputes and allowing development projects through its budget allocations. States are practically dependent on the Centre for the financing of the irrigation projects. The Central government has established Control Boards to oversee, construct, implement and supervise various river valley projects and even day-to-day functioning of these projects: These include the Bhakra-Nangal Management Board (involving the states of Punjab, Haryana, Rajasthan, Delhi and Himachal Pradesh), Tungabhadra Control Board (Andhra Pradesh and Karnataka), Rajasthan Canal Board (Rajasthan and Punjab), Chambal Control Board (Rajasthan and Madhya Pradesh), Gandak Control Board (Bihar and Uttar Pradesh) and Parabikulam Aliyar (Tamil Nadu and Kerala).

Besides, there are single State Boards controlling one river or a project, such as Nagarjunasagar and Pochampad (Andhra Pradesh); Kosi (Bihar); Kakapara, Ukai and Mahi (Gujarat); Bhadra, Upper Krishna, Ghataprabha, and Malaprabha (Karnataka); Tawa (Madhya Pradesh); Bhima and Jayakwadi (Maharashtra); Hirakund and Mahanadi Delta Scheme (Orissa); Sarda Sahayak and Ramganga (Uttaranchal); and Farakka, Mayurakshi, and Gangsabati (West Bengal). There are also river valley authorities established like the Damodar Valley Authority (West Bengal and Bihar), and Cauvery Authority. These authorities are established on the same pattern as the Tennessee Valley Authority in the United States.

India is a Monsoon Climate country with geography of Ocean to the South giving rise to huge precipitation and the Himalayas to the North blocking the rains thus giving rise to many large and small rivers. It is these many rivers criss-crossing the boundaries of the various states that lead to the disputes over the waters of these rivers. In the Indian context, over 85 percent of Indian territory lies within its major and medium inter-State rivers. India has 44 medium rivers,

of which 14 major rivers are all inter-State rivers.³ Since the British period there have been many disputes in India over sharing of river waters. After Partition and Independence the sub-continent and India in particular has continued to witness the disputes over rivers some of which have taken very aggressive and violent turns with huge agitations by people and governments on opposite sides. It is this potential for conflict over the water sharing that had led the Founding Fathers of the Constitution to consider and debate the issue in the Constituent Assembly and later on in the Parliament.⁴ Hence a lot of steps have come to be taken to ensure equitable distribution of water between the states through various principles and mechanisms including constitutional and legislative mechanisms and provisions. It is thus necessary to look at the various constitutional provisions in India to settle the water disputes.

Constitutional Provisions to Settle River Water Disputes in India

Brief History

For the settlement of inter-state water disputes, the Draft Constitution of India virtually contained identical provisions as the Government of India Act, 1919 and 1935. Dr Ambedkar had provided for the Article 242A which was later converted into Article 262 retaining the same provision. Article 262 was adopted with a view to increase irrigation and power potential in independent India and exploits the interstate rivers of their full potential. This article empowers the Parliament to 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 and to bar the jurisdiction of the Supreme Court or any other court in respect of such disputes.

In accordance with this provision, the Parliament has enacted the inter-state water Dispute Act, 1956. The Act provides for the constitution of a tribunal by the Central Government for the settlement of an inter-state water dispute when a request is received from a state government and when the Central Government is of the opinion that the dispute cannot be settled by negotiations. It provided that a one-man tribunal be appointed from among judges of the Supreme Court or a High Court, sitting or retired, nominated by the Chief Justice of India. The provision is amended to increase membership of the tribunal to three sitting judges of the Supreme Court or High Court. The central government has also been given the responsibility of: 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 the Parliament by law to be expedient in the public interest.

The Parliament has also enacted The River Board Act, 1956, which authorizes the Central Government to constitute river boards with consultation of the state governments for regulation and development of inter-state rivers Krishna, Godavari and Narmada. The Government of India formed rules on June 30, 1959. To settle inter-state water disputes. It is laid down that where the government of a state desires to refer any water dispute to a tribunal for adjudication, it should

³ Bakshi P.M.(1999) Article 262 and Inter-State Disputes Relating to Water, Background Paper for National Water Commission.

⁴ Valsalan, Inter-State Water Disputes in India (Central Board of Irrigation and Power), (1997), Constituent Assembly Debates; Valsalan, pages 19, 20.

address the Secretary of the Government of India, Ministry of Irrigation Power, and give particulars of the dispute. The tribunal for such a dispute would require the parties to nominate representatives to present their case before it within a specific time in a prescribed form. If one of the parties fails to nominate a representative or the representative does not appear before the tribunal, a decision might be given in his absence by the tribunal. On March 22, 1962, the Centre announced for establishing nine River Boards for the Mahanadi, Tapti, Mahi, Krishna-Godavari, Satlaj, Beas- Ravi, Yamuna, Cauvery and Ajoy basins. The Boards were designed to, help in controlling and regulating the supply of the inter-state rivers for optimum utilization and dealing effectively with the problems of irrigation, Hydel power generation, flood control, soil conservation, drainage, and navigation etc.

Constitutional and Legal Provisions

Government of India Act, 1919

The history of resolving inter-state differences goes back to 1919 when diarchy was introduced among the Provinces in British India under the Government of India Act, 1919, wherein irrigation became a Provincial, but “reserved” subject. Before the Provincial Government could take up any irrigation project involving the interests of more than one Province, the prior approval of the Secretary of State had to be obtained.

Government of India Act, 1935

- (a) The Government of India Act, 1935 (Provincial List, Entry 19) placed irrigation within the sole jurisdiction of the Provinces.
- (b) However, sections 130 to 133 of the Act of 1935 made detailed provisions as to inter-Provincial, etc., disputes concerning water. The relevant provisions applied to “States” also, i.e., to those Indian States, which may ultimately join the contemplated federation. Any Province or State whose interests were perpetually affected in respect of water supplies from a natural source, owing to the action of another Province or State, could complain to the Governor General.
- (c) The Governor General was required to appoint a Commission to investigate and report to him on the matters to which the complaint related (unless, in his opinion, the issues were not of sufficient importance).
- (d) After consideration of the report, the Governor General was to give such decision as he deemed proper.
- (e) The order of the Governor General was to be binding upon the parties. However, before the Governor General gave his decision, the Governor of any State (or the ruler of a Princely State), affected by the order, could require the Governor General to refer the matter to His Majesty in Council, which could give such decision as it deemed proper.
- (f) Jurisdiction of the Federal Court (or any other court) was barred, if action to lodge a complaint had been taken by the Governor of a Province, etc.

Bill in the Constituent Assembly

In the draft Constitution, the corresponding provision (articles 239 – 242 of the draft) contained propositions substantially similar to those contained in sections 130 – 133 of the Government of India Act, 1935, except that the President was substituted for the Governor

General and the reference of a dispute was to be by the President to the Supreme Court under the latter's advisory jurisdiction. (Jurisdiction of all other courts was barred).

Legislative competence

- (a) Under the Indian Constitution, States have power to legislate (State list, entry 17), with respect to the following subject:

“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 1.”

- (b) Union list, entry 56, reads as under:

“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.”

Constitution of India-Article 262

Article 262 of the Constitution reads as under:

“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, 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)”

[It should be noted that the “dispute” need not be between States, as such].

Inter-State Water Disputes Act of 1956

- (a) In exercise of the power conferred by article 262 of the Constitution, Parliament has enacted the Inter-State Water Disputes Act, 1956. Section 3 (and succeeding sections) of the Act contemplate the reference of a “water dispute” to a Tribunal. Section 2(c) of the Act defines “water dispute”, as meaning any dispute or difference between two or more State Governments with reference to the specified matters. However, the word “complaint”, used in article 262 of the Constitution, is not used in the Act of 1956.
- (b) Under the provision of the 1956 Act quoted above, the request to the Central Government has to be made by a State Government. A citizen cannot directly make a “complaint”, - though the Constitution, in article 262, mentions a dispute or a complaint without confining it to a dispute raised or a complaint made by a State Government.

Pursuant to the power conferred by the Constitution (article 262), Parliament has enacted the Inter-State Water Disputes Act, 1956. Its main features can be thus summarised:

- (a) A State Government which has a water dispute with another State Government may request the Central Government to refer the dispute to a tribunal for adjudication.
- (b) The Central Government, if it is of opinion that the dispute cannot be settled by negotiation, shall refer the dispute to a Tribunal.

- (c) The Tribunal's composition is laid down in the Act. It consists of a Chairman and two other members, nominated by the Chief Justice of India from among persons who, at the time of such nomination, are Judges of the Supreme Court.
- (d) The Tribunal can appoint assessors to advise it in the proceedings before it.
- (e) On the reference being made by the Central Government, the Tribunal investigates the matter and makes its report, embodying its decision. The decision is to be published and is to be final and binding on the parties.
- (f) Jurisdiction of the Supreme Court and other courts in respect of the dispute referred to the Tribunal is barred.
- (g) The Central Government may frame a scheme, providing for all matters necessary to give effect to the decision of the Tribunal. The scheme may, *inter alia*, provide for establishing an authority for implementing (section 6A).

The River Board Act, 1956

- (a) The River Boards Act, 1956, provides for the establishment of River Boards, for the regulation and development of inter-State rivers and river valleys. On a request received from a State Government or otherwise, the Central Government may establish a Board for "advising the Government interested" in relation to such matters concerning the regulation or development of an inter-State river or river valley (or any specified part) as may be notified by the Central Government.
- (b) Different Boards may be established for different inter-State rivers or river valleys.
- (c) The Board is to consist of the Chairman and such other members as the Central Government thinks fit to appoint. They must be persons having special knowledge and experience in irrigation, electrical engineering, flood control, navigation, water conservation, soil conservation, administration or finance.
- (d) Functions of the Board are set out in detail in section 13 of the Act. Subject-wise, they are very wide, covering conservation of the water resources of the inter-State river, schemes for irrigation and drainage, development of hydro-electric power, schemes for flood control, promotion of navigation, control of soil erosion and prevention of pollution. But the functions of the Board are advisory and not adjudicatory.
- (e) By section 14(3), the Board is directed to consult all the Governments concerned and to secure their agreement, as far as possible. Thereafter, by section 15, the Board is empowered to frame schemes, obtain comments of the interested Governments and finalise a scheme. [Section 15(4)] But the schemes do not seem to have a mandatory force. It appears from section 15(5) and section 15(6) of the Act that:
 - (i) the Board can advise the Governments concerned as to execution of the scheme and
 - (ii) the Central Government can "assist the Governments interested", in taking such steps as may be necessary, for execution of the scheme.

This Act authorizes the Central Government to constitute River Boards after consultation with the state governments for regulation and development of inter-state rivers. The Government of

India formed Rules on June 30, 1959, to settle inter-state water disputes. Under this Act many River Boards have been established such as for rivers Krishna, Godavari and Narmada.

Conclusion

The past experience in India, in connection with the resolution of inter-State disputes relating to waters, has not been very happy. It is not easy to say whether this is due to the nature of the disputes, political factors or inadequacy of the constitutional provisions on the subject. Whether or not an effective solution can be found to the problem, is a different matter. But the subject merits a thorough study and analysis if we are to prevent water linked conflicts in India which can pose a serious threat to the countries unity and integrity and also for nation-building and integration. It is this situation which had led Mr Setalvad, a jurist and scholar, to say “The tribunals appointed under the Inter-State Water Disputes Act to adjudicate upon them have so far produced no results. We know from the experience of other countries, how long drawn-out and expensive these adjudications can be; and our country cannot afford either the expense or the long delays. Our Constitution-makers, anticipating such situations, have provided ample power to the Union to enable it to deal with them. Why should not the Union, it is asked, exercise its powers of legislation under Entry 56 of List 1, which empowers it to legislate 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 State is declared by Parliament by law to be expedient in the public interest? Such action by the Union, it is urged, will have the advantage of ensuring a quick solution of these disputes arrived at from the national perspective”. (Setalvad, Union State Relations under the Indian Constitution (1974), pages 95-96) Hence the Indian Constitution has made reasonably good provisions and Parliament has also made sufficiently effective enactments to manage the river water disputes and ensure equitable apportionment of river waters among the states in India. But there is still a lot of potential to improve the river water dispute resolution mechanism in India. For Goa too this issue is of great significance as Goa is also embroiled in a river water dispute with the neighbouring state of Karnataka over the River Madhei/Mandovi. Many Tribunal are functional and now even a River dispute Tribunal for Goa Karnataka Madhei River dispute has been setup by the Central Government under the Constitutional and legislative provisions.

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Appendix

Major Disputes and Present Status			
River(s)	States	Date of Constitution of Tribunal	Date of Award
Krishna	Maharashtra, Andhra Pradesh, Karnataka	April 1969	May 1976
Godavari	Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh and Orissa	April 1969	July 1980
Narmada	Rajasthan, Madhya Pradesh, Gujarat, Maharashtra	October 1969	December 1979
Cauvery	Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry	June 1990	Report u/s 5(2) received 5.2.2007
Krishna	Karnataka, Andhra Pradesh and Maharashtra	April 2004	Report u/s 5(2) pending
Model/ Mandovi/Mahadayi/	Goa, Karnataka and Maharashtra	Under Construction	-
Vansadhara	Andhra Pradesh & Orissa	Under Construction	-

Source: Ministry of Water Resources, Govt. of India

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