

# **INTER-STATES WATER SHARING: A CASE STUDY OF HYDRO-POLITICS IN INDIA**

*Mr. Abdul Rauf Iqbal*

## **Abstract**

*Water is the elixir of life and indispensable resource for human activities, animals need and eco system. It is a critical natural asset and driver of socio-economic development. On the other hand, temporal variations of water resources, declining per capita water availability, profound reliance on irrigated agriculture, federal constitutional structure of the country, and the sharing of major rivers by two or more states have resulted into an acute competing demand for water among the different states in India. Those competing demands have been escalated in many areas to difficult disputes over the waters of those inter-state rivers. This article discusses and analyzes the dispute settlement process over shared rivers between the states of India. The article argues that although the process established for settling water disputes between the Indian states is unique and of significant importance, a number of problems have emerged in the course of implementing this process and those problems need to be addressed to strengthen the relevance and effectiveness of the process.*

## **Introduction**

Water is the ‘elixir’<sup>1</sup> of life and indispensable resource for human activities, animals need and eco system. It is a critical natural asset and the driver to socio-economic development. With every passing day, the quality and quantity of fresh water is deteriorating because of numerous reasons. “Extensive demographic growth, disordered urbanization, political actions, economic motives and climatic changes” etc are the potent factors behind the worsening situation of water availability.<sup>2</sup> Uneven distribution of water resources further adds fuel to the fire and today states are witnessing serious

issues with regard of distribution of water. On one hand, water demand is increasing rapidly and at the same time, water supply is decreasing and resultantly a huge gap has emerged between demand and supply. This gap between demand and supply is creating a conflicting situation especially for the riparian states.

Interestingly, water runs in a particular channel and crosses the international and political boundaries. Therefore it not only determines the relationship between riparian states but further complexities arise when water is distributed disproportionately. So, sharing inter-state water becomes extremely difficult task and may create both conflict and cooperation among the states and same is the case in India.

Seventeen out of India's 18 major rivers are shared by two or more states<sup>3</sup> therefore distribution of water among the states is a serious challenge for India. Due to multiple reasons, many parts of India are facing water shortage and water is becoming increasingly a scarce resource in these areas. A report suggests that India is expected to become 'water stressed' by 2025 and 'water scarce' by 2050.<sup>4</sup> In 1951, the annual per capita availability of water was 5177 m<sup>3</sup>, which reduced to 1342 m<sup>3</sup> by 2000.<sup>5</sup> The problems of water availability in India are compounded further by the temporal and spatial variations.

Some parts of India receive little or no rain at all, whereas other areas receive considerably high amount of rains and could be seemly affected by floods during the rainy season. Drought is also a recurring phenomenon and usually affects the large areas of the south and northwestern states of India.<sup>6</sup> The need to provide food for the increasing population has resulted in an upsurge of water use by the irrigation sector in India. Agriculture is the single largest user of water accounting for about 85% of total use and in some states, like the predominately agricultural state of Punjab, the figure is considerably higher, reaching 95%.<sup>7</sup> Under the federal constitutional structure of India, water is by and large, a state subject with a limited defined role for the central government.<sup>8</sup> The spatial and temporal variations of water

resources in India, the steadily declining per capita water availability, heavy reliance on irrigated agriculture, the federal constitutional structure of the country, and the sharing of rivers by two or more states have resulted in acute competing demands for water among the different states in India. Those competing demands have been escalated in many areas to difficult disputes over the waters of those inter-state rivers.

In this premise, this article discusses and analyzes the dispute settlement process over shared rivers between the states of India. The article argues that although the process established for settling water disputes between the Indian states is unique and of significant importance, a number of problems have emerged in the course of implementing this process and those problems need to be addressed to strengthen the relevance and effectiveness of the process.

### **Hydro Environment of India: An Overview**

India is the largest country of South Asia in terms of both resources and population. It is a country that has long history of agriculture and farming due to suitable environment, soils and many major river systems that irrigate the country. There are 15 major river basins in India namely; Indus, Ganga, Brahmaputra and Baitarani, Brahmani, Rushikulya, Vamsadhara, Sarada and Nagavali, Godavari, Krishna, Cauvery etc.<sup>9</sup> This extensive network of rivers has allowed India to construct one of the most impressive and extensive irrigation networks in the world. India had begun to develop its agricultural base early on after the independence and in 1948 there were nearly 160 large-scale projects under construction in the length and breadth of India.<sup>10</sup> A Central Water Commission (CWC) report points out that there are more than 5000 large dams with height of more than 15 meters throughout India whereas most of these dams have been constructed after independence.<sup>11</sup> Similarly, more than 60 dams of national importance with each dam having net storage capacity of one billion cubic meters or more already exist and 10 more such dams are under construction.<sup>12</sup> Despite such an extensive irrigation network, most of these rivers flow

through many states before reaching their deltas. The historic boundaries of Indian states were formed by British on the basis of political, administrative and military aspects instead of any scientific basis of resource distribution. The case of development of irrigation networks follows similar framework. Therefore, the conflicting interests of upper and lower riparian states have led to many interstate disputes since Indian independence and several such disputes continue to mar Indian socio-political harmony despite several years of negotiations and arbitration.

It should be noted here that river water disputes among states have recently increased in their frequency as well as severity and this trend is likely to continue for a few coming years. Some of the main factors that can cause this trend are rapid urbanization, industrialization, water pollution and the aspect of sheer population pressure on the Indian continental land mass. The situation is further complicated by the fact that the source glaciers in Himalayas have commenced shrinking over the years leading to fears of acute water shortage in years to come. India is projected to be the most populous country by the year 2050 according to UN statistics. Such population pressures are going to create severe problems in terms of food security as well as availability of fresh water resources in India.

Similarly, the problem of geographic locations creates a major problem for India. On one hand India is trying to divert water from rivers going into other countries like Pakistan and Bangladesh, while it is itself facing a similar problem from planers in China which is an upper-riparian country in case of India. The availability or shortage of water in rivers is going to become a major source of disputes for India in both regional and domestic context in coming decades.

### **Inter-state Water Disputes in India**

The federating units of India are vastly different from one another and the fact that majority of the states really on agriculture paves the way for water disputes. These disputes

are also exploited by the local politicians to gain political support. Incorrect information, politicization and involvement of ethnic passions often turn these disputes into violent clashes and enmity among populace of the state continues even after legal resolution of disputes.<sup>13</sup> Another important aspect is that major rivers pass through several adjoining states with each having a claim on share of water of the river.

Although there are several water disputes between states however, some of the major river water disputes between federating states that have emerged since Indian independence are; Yamuna river dispute among states of Delhi, Haryana and Utar Pradesh; Krishna-Godavari dispute between states of Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Orissa; Ravi-Beas dispute between Punjab and Haryana; Mahadiya river dispute between Goa and Maharashtra, Vansadhara river dispute between Orissa and Andhra Pradesh; Mullapriya dispute between Kerala and Tamil Nadu; Bhabli river dispute between Maharashtra and Andhra Pradesh and the Cauvery river dispute between Karnataka and Tamil Nadu (although Kerala and Pondicherry have also claimed stakes on river water).<sup>14</sup> The case of Cauvery river dispute between Karnataka and Tamil Nadu draws an interesting analogy with inter-provincial dispute between Punjab and Sind in Pakistan over waters of Indus River. The dispute is mainly a result of politicization of the issue by opposing political parties and spread of incorrect information among the local populace that lead to long term enmity and attachment to the dispute by the people.<sup>15</sup>

Inter-state water disputes are increasingly becoming important for Indian government and the dispute resolution system, based on Inter-State River Dispute Act-1956<sup>16</sup>, is considered by many experts as outdated and deficient in requirements of the contemporary era. The act itself leaves great room at the discretion of actors involved. In many cases, the dispute lingers on despite decisions by Supreme Court of India or an apparent political settlement.

An important point to be understood is that India's massive size becomes its primary advantage in such disputes as a dispute between many of such states cannot pose an existential threat for India despite politicization and involvement of sentiments of local populations. This size availability of resources gives central government a lot of leverage over state governments in settling disputes.

India's geographic location and size render the country to an advantageous position, where water disputes don't pose any existential threat to federation nor do they inculcate any vegetate emotion inclination among masses.

### **Constitutional Structure for Water Disputes**

The relationship between states and central governments is defined by the Indian Constitution which is quasi-federal in nature. Articles 245 and 246 of the Constitution deal with distribution of powers between the Union Parliament and the State Legislature. "Article 245 empowers the Parliament and the Legislature of the state to emit laws for the whole or part of the country and state respectively, in both the cases, subject to the provisions of the Constitution. According to Article 246(1), Parliament has exclusive powers to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to the Constitution. This List is known as 'the Union List'."<sup>17</sup> On the other hand, the Legislature in any state, according to Article 246 (3) of the Constitution "has exclusive power to make laws for such a state with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution. This is known as 'the State List'."<sup>18</sup> "The Union Parliament or any State Legislature also has according to Article 246 (3) of the Constitution, has concurrent powers to make laws with respect to any of the matter of the enumerated in List III in the Seventh Schedule to the Constitution. This list is known as the 'Concurrent List'."<sup>19</sup>

Water is listed at Entry 17 in the State List and the State Legislature exercises power over water. The constitution states

that “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”.<sup>20</sup> On the other hand, Entry 56 of the Union List in the Seventh Schedule endows the Union Parliament with legislative authority over “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”.<sup>21</sup>

In addition to these two Entries, Article 262(1) of the Constitution deals with disputes relating to inter-states rivers. It states that “Parliament may by law, provide for the adjudication of dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-state river or river valley”. Article 262(2) states that “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) notwithstanding anything in the Constitution”. Taking lead from this Article, Indian Parliament passed Inter-state Water Disputes Act 1956.

### **Inter-state River Water Disputes Act 1956**

The Inter-state River Water Disputes Act was promulgated on August 18, 1956. The Act defines a water dispute mainly “as any dispute between two or more states regarding the use, distribution or control of the waters of or in, any interstate river or river valley, or the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement”.<sup>22</sup> Clause (2) of the Act deals with definition and it is amazing to note that the Act does not define the term ‘inter-state’. Clause (3) of the Act provides mechanism of complaints by State governments. The aggrieved state can submit its complaint under this Act when it believes that a water dispute with another state has arisen or is likely to arise, because its interests in an interstate river have been, or are likely to be, prejudicially affected. Then central government analyzes the state requests and

when the central government is of the view that the water dispute cannot be settled through negotiations, it constitutes a water dispute tribunal, within a period not exceeding one year from the date of receipt of such request, by notification in the official Gazette.<sup>23</sup>

The tribunal consists of a chairman and two members to be nominated by the Chief Justice from amongst the judges of the Supreme Court or of a High Court.<sup>24</sup> The tribunal may appoint two or more persons as assessors.<sup>25</sup> It shall have the same powers as those vested in a civil court including the summoning and enforcing attendance of any person and examining him on oath and requiring the production of any documents and materials. As part of the decision making process, the tribunal may require any state to carry out or permit the carrying out of any surveys and investigations as it may deem necessary for the adjudication.<sup>26</sup> The decision of the tribunal may contain directions as to how the expenses of the tribunal including the remuneration allowances or fees of the Chairman, the other members of the tribunal and the assessors would be paid. Differences on any point are to be decided according to the opinion of the majority of the members of the tribunal.

The decision of the tribunal is final and binding on the parties to the dispute and is forwarded to the central government for publication in the official Gazette. According to Section 262(2) of the Constitution, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a tribunal under the Act. If the central government or any of the party states to the decision believe that any part of the decision of the tribunal requires explanation, or that guidance is needed on any point not originally referred to the tribunal, a request for such clarification or guidance may be referred again to the tribunal, within 3 months of the decision, for further consideration. Once the central government is satisfied that no further reference to the tribunal related to the water dispute is necessary, then the central government shall dissolve the tribunal.



Although the tribunal helped in settling inter-state water disputes, yet the institutional gap surfaced as a new challenge since there was no institution to implement the decisions of the tribunal. To fill this implementation space, an amendment was passed to the Act in 1980 (Act 43 of 1980) which authorizes the central government to frame scheme or schemes for the establishment of any authority for the implementation of the decision or directions of the tribunal. Since the adoption of this Act, five disputes over the sharing of the water of inter-state rivers have arisen and have been referred to tribunals constituted under the Act. Those rivers are the Krishna, the Narmada, the Godavari, the Ravi and Beas and the Cauvery.

### **River Disputes Settlement Process: Recurring Issues**

Negotiations and mediation are considered as the basic tools for settlement of disputes. Although, these basic mechanisms have been used by the states, yet such disputes have emerged which could not be resolved through negotiations or mediation. This situation has resulted in the promulgation of the Inter-State Water Disputes Act in August 1956. Different scholars consider this Act as an “important development in the history of water law in India”.<sup>27</sup> Notwithstanding, there are serious issues with water dispute settlement process which are discussed as under:

- The effectiveness of this constitutional milestone came under the question because of lack of implementation body as it was witnessed in case of the Ravi and Beas and the Cauvery rivers disputes. On the other hand, the disputes over the Godavari River and to some extent the Narmada River seem to have been successfully resolved.
- Second important issue is that the process is very lengthy. Firstly, the central government has one year to establish a tribunal. Secondly, tribunal takes a long time to issue its final order. The Act did not originally establish a time frame for the tribunal to reach a decision. The Krishna Water Disputes Tribunal took

over 7 years to reach its decision and each of the Godavari and the Narmada Water disputes tribunals took about 10 years.

- In order to streamline the process, central government adopted an amendment to the Act on March 28, 2002. The amendments require the Tribunal to issue its report within a period of 3 years with an extension of 2 years for unavoidable reasons. The central government constituted the Ravi and Beas Water Tribunal under this amendment which is again criticized as to why the central government confined the amendment of the Act to the Ravi and Beas. This is perhaps because the central government does not want to take a decision regarding the establishment of a tribunal and would rather leave it to the parties to make such a determination<sup>28</sup>. With water disputes being interwoven into politics in most states, this seems like a prudent decision.
- The Act only deals with procedural matters and does not provide any guidance to the tribunal on how to handle the substantive issue of water allocation among the riparian states. This may be one reason for the long time the tribunals usually take to reach a decision. The different tribunals thus far constituted have used their own criteria for allocation of water among the riparian states. They are generally guided by factors similar to those enumerated in the Helsinki Rules on the Uses of the Waters of International Rivers.<sup>29</sup>
- The Act excludes groundwater from adjudication while ignoring the fact that the groundwater is connected to inter-state rivers.
- Once the tribunal is dissolved, there is no authority with jurisdiction to provide clarification or on any subsequent controversies or issues related to the order of the tribunal that may arise.
- The Act does not provide for either an appeal or review of the tribunal award. Article 262 of the Constitution and Section 11 of the Act expressly take away the jurisdiction of the Supreme Court where any water dispute as referred to the Tribunal. Section 6(1) of the

Act declares that the decision of the Tribunal shall be final. The jurisdiction of the Supreme Court in the Narmada dispute was invoked under Part III of the Constitution for the enforcement of fundamental rights. In the case of the Krishna water dispute, the jurisdiction of the Supreme Court was invoked under Article 131 of the Constitution which provides for an Original Suit in case of disputes between the States. In the case of Cauvery water dispute, the jurisdiction of the Supreme Court was invoked for the implementation of the interim order of the Tribunal. These cases were adjudicated by the Supreme Court in spite of the express bar, due to lacuna in the present Act.

- Moreover, the amendment adopted in March 2002 to the Act further strengthens the decisions of tribunals. It states that decision of the Tribunal after publication in the official gazette by the central government shall have the same force as an order or decree of the Supreme Court.
- The Act originally did not include any provision regarding the establishment of an authority to implement the decision of the tribunal. This issue was settled by an amendment to the Act in 1980 to authorize the establishment of such an authority when experience identified the need for it. Yet the establishment of this body did not solve the problems that plagued the Narmada projects nor was the authority that was established to implement the interim order for the Cauvery dispute able to do so. This was due partly to the lack of the adequate authority for each of those organizations and partly to the lack of political will on the part of the riparian states.
- This Act does not provide any space for the establishment of a river basin organization for each of the shared rivers with adequate authority and resources. Such river basin organization could not only act as a joint management institution but could also assist in resolving any dispute that may arise between the riparian states.

- The Tribunal often sets a deadline for the review of their final order. The same happened in the Krishna award which was subject to review after May 31, 2000, as specified in the final order itself. This often leads to water grabbing because the concerned states try to invest heavily in water related works so that the review may go in their favor keeping in view the massive investment. It is worth mentioning that this review factor also proves as blessing in disguise since the investment in water related works does not go waste and helps the state in one way or the other.

It is worth noting the tribunals deal with the existing agreements between the riparian states in a different fashion. The agreements that were entered into by the predecessor states prior to the reorganization of the Indian states were superseded by the decisions of the tribunals. On the other hand, the agreements that were entered into by the states which are parties to the disputes have been largely honored by the tribunals. In the case of the Godavari, the agreement facilitated the work of the tribunal and the tribunal simply ratified and incorporated those agreements in its decision. Indeed, the decision consisted largely of annexes reproducing those agreements. This was because those agreements were entered into by the states which are party to the dispute, and not their predecessors. On the other hand, the Krishna award superseded some of the existing agreements because they were not entered into by the states that are parties to the dispute.

## **Conclusion**

Inter-state River Water Disputes Act is a constitutional milestone which India has crossed back in 1956. This Act not only provides a platform for resolution of river water disputes but also creates an enabling environment where legal norms play their due role in dispute settlement process. With the every passing day, this Act has also faced problems and to keep the pace with the ongoing developments, requisite amendments have been made to this Act. The principle of

reasonable and equitable utilization has been the guiding rule for the different tribunals in their attempts to reconcile the conflicting claims of the riparian states. In this process, a number of principles on water sharing were either elaborated or confirmed. It should also be pointed out that although the tribunals have taken a long time to resolve the disputes, negotiations that preceded adjudication have also taken a long time. Thus, this Act is a unique legal instrument. The problems that cropped up since its enactment have not diminished its relevance and usefulness. Water is becoming increasingly a scarce resource in India and the state governments are becoming more assertive and powerful. Indian planners are deeply aware of the problems at hand and therefore massively spending on improving water management systems as well as conservation mechanisms for dealing with the emerging crisis. New mechanisms are being introduced for accurate measurement of available water resources as well as use. India has spent massive resources on conservation and reuse of water available for agriculture.<sup>30</sup> Under these circumstances, the urgent task is not to amend the Constitution to take responsibility over water away from the states and confine it to the center. Rather, it is time to realistically address the issues that have curtailed the relevance and usefulness of the Act since its promulgation. That is indeed the real challenge.

## **Notes**

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<sup>4</sup> IDSA Task Force, *Water Security for India: The External Dynamics* (Institute for Defence Studies and Analyses, 2010).

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- <sup>18</sup> *Ibid.*
- <sup>19</sup> *Ibid.*
- <sup>20</sup> Entry 17, State List, Constitution of India
- <sup>21</sup> Entry 56, Union List, Constitution of India
- <sup>22</sup> Salman M.A. Salman, “Inter-states Water Disputes in India: An Analysis of the Settlement Process”, *Water Policy*, Vol. 4 (2002), 225.
- <sup>23</sup> Clause 4(1) of Inter-state River Water Disputes Act
- <sup>24</sup> Clause 4(2) of Inter-state River Water Disputes Act
- <sup>25</sup> Clause 4(3) of Inter-state River Water Disputes Act
- <sup>26</sup> Salman M.A. Salman, (2002), 225.
- <sup>27</sup> Salman M.A. Salman, 234.
- <sup>28</sup> Salman M.A. Salman, 234.
- <sup>29</sup> International Law Association, 1966
- <sup>30</sup> Water Resources Information System Directorate, *Water and Related Statistics*, (New Delhi, Central Water Commission, December 2010)