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### INTERSTATE WATER CONFLICTS IN INDIA

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**Abstract:** The state governments dominate the allocation of river waters. Since rivers cross state boundaries, disputes are inevitable. The Inter-State Water Disputes Act of 1956 was legislated to deal with conflicts and included provisions for the establishment of tribunals to adjudicate where direct negotiations have failed. However, states have sometimes refused to accept the decisions of tribunals. A downstream state's action can affect the upstream state interest only in one case, when a downstream state is building a dam/barrage near its state boundary and submerging the territory of an upstream state on permanent/temporary basis. Other than this action, no other action of a downstream state could affect the upstream states interest which they have been using for economical, ecological and spiritual/religious aspects. The meaning of the word interest in this context is concern/consequence of losing the prevailing water use. The economic advantage a State seeks to gain by using natural resources brings in political moves which provide little room for the rights of commons. The legal and constitutional provisions have clearly indicated that the Centre has a right to take decisions in the matters of interstate rivers (7<sup>th</sup> schedule), even if water is a State chapter. The Interstate River Water Disputes Act of 1956 has empowered the State to go for a tribunal in case such conflict arises. All these provisions are incorporated to protect the riparian rights of States and have their own blurred interpretations. The whole set up shows that the project benefits are looked upon as indicators for economic progress and the sacrifices are valued in compensations.

**Keywords:** Dispute; Implication; Schedule; River; Water.

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### INTRODUCTION

Because large areas of India are relatively arid, mechanisms for allocating scarce water are critically important to the welfare of the country's citizens. Water contributes to welfare in several ways *viz.* health, agriculture and industry. Because India is a federal democracy and because rivers cross state boundaries, constructing efficient and equitable mechanisms for allocating river flows has long been an important legal and constitutional issue. Numerous inter-state river-water disputes have erupted since independence. A recent dispute over use of the Yamuna River among the states of Delhi, Haryana and Uttar Pradesh, was resolved by conferences involving three state Chief Ministers, as well as the central

Government. This approach was adopted only after prior intervention by the Supreme Court had failed. Not all disputes have happy endings, however: for example, the larger dispute between Karnataka and Tamil Nadu over the waters of the Cauvery rages on. Inter-state water disputes continue to fester. Such disputes are a persistent phenomenon in India. The disputes in India over the Cauvery River began in 1807, the year Beethoven first performed his Fourth Symphony and 12 years before Sir Stamford Raffles landed in Singapore. In that year, the Presidency of Madras (Tamil Nadu) complained about excessive upstream use of Cauvery River water by the Princely State of Mysore (Karnataka). By interstate, we mean a river that crosses an

internal State border or that serves as the State border (The Constitution of India, 1952). We focus on how India and the United States divide water between their own respective States and how they resolve competing claims, particularly during shortages. Few cities in India, including those with a population more than one million, have a clean, predictable water supply. Two-thirds of India's population still lacks access to basic sanitation facilities. Rapid population growth and industrialization have severely damaged water quality of many rivers. India's challenge is therefore to provide clean water for its population while at the same time expanding its economy and creating jobs in the competitive international marketplace. But India faces a water storage problem. Its annual demand for water is more than two times the available storage behind reservoirs. The lack of significant reservoir storage in India puts it at a disadvantage: it must rely on precipitation during the annual monsoon season. In many areas of the country, only 10-15 days a year bring most of the rainfall. Farmers are especially vulnerable to those weather patterns because they depend heavily on river water for irrigation. Approximately 83% of India's diversions from rivers go for irrigation. Groundwater, in contrast, typically supplies cities. In some areas of the country, India's groundwater supplies are plentiful. In other regions, however, there are worrisome indications that groundwater mining for commercial purposes is far outstripping natural replenishment. The equity is clearly an elusive concept. It implicates issues of fairness, a subjective standard. Most vested interests in a river basin want more than their current share of the water in the name of fairness. Other interests in the basin typically do not want to accommodate the request because they have a different and sometimes more parochial idea of equity. This is a zero-sum game: when one party gets a larger share, it comes at the expense of someone else.

### **Interstate Water Disputes**

More than 80% of India lies within an interstate river basin. Thus, the resolution of interstate conflicts affects virtually every area of the country and virtually every part of the economy, from irrigation to industrial uses. Even before

independence from Great Britain in 1947, the boundaries of India's States changed regularly. At the time of independence in 1947, India consisted of 11 provinces and 562 Princely States, of which 147 were vested with some degree of autonomous legal authority. The Constitution of India, which came into force in 1950, consolidated these units into several dozen States. Six years later, India redrew its State boundaries when Parliament approved the States Reorganization Act of 1956. The legislation re-configured most State borders based on language linguistic boundaries that reflected the diverse ethnic background and languages of the Indian population (Sasidhar, 2012a;b). In 2000, three new States- Uttarakhand, Jharkhand and Chhattisgarh joined the Union. India is currently considering the creation of more States (Daniel, 2011).

### **Role of the Central Government**

The national government in India is commonly referred to as the Central Government or the Centre. It typically does not own large dams for irrigation. That responsibility falls to the States, which have taken the lead for the last 100 or more years to build and manage dams across India's large rivers. As early as the 1850s, the British developed elaborate plans for the Princely States to construct irrigation and navigation canals and generate revenue. The goal was to tame the rivers of India and prevent the extremes of flooding and destruction, drought and famine. Some of those ambitious plans remained on the books and were never implemented. Other plans became reality and transformed India's rivers in virtually every part of the country, from the Ravi-Beas in the northwest to the Godavari, Krishna and Cauvery in peninsular India (central and south) (Godavari Water Disputes Tribunal, 2012). Despite the historical role of the States, the Central Government has established several corporations that are in the dam-building business, albeit with limited missions:

i. The National Hydro Power Corporation (NHPC) is a federal enterprise that constructs and manages hydroelectric dams. The NHPC does not build dams, canals or pumping stations for irrigation. The Central Government has created several joint ventures with States to build dams.

ii. The Nathpa Jhakri Power Corp. (between the Central Government and the State of Himachal Pradesh) and Tehri Hydro Development Corp., Ltd. (between the Central Government and the State of Uttar Pradesh) are examples.

iii. The Damodar Valley Corporation (DVC) is a public entity with a regional mission in northeast India. The DVC was created in 1948 and has built dams to control floods, generate electricity and supply water for irrigation and other uses in the Damodar River Basin. The basin drains part of two States: Jharkhand, formerly called Bihar; and West Bengal. The DVC is modeled loosely on the Tennessee Valley Authority (TVA) in the United States.

The absence of federal infrastructure on most interstate rivers in India means that the Central Government has little leverage to assert itself it does not own the dams, locks, canals and pumping stations. Nonetheless, the Central Government's Ministry of Water Resources in India plays an important role in India. It monitors water resource development and provides technical information and assistance to other parts of the Central Government and to State governments, as well. The Ministry's Central Water Commission remains the best source for understanding legal issues involved in interstate and international water issues.

### **Constitution**

India is a Union of States governed by a Constitution, which, among other things, establishes Parliament as the legislative branch. India consists of 28 States and seven Union territories. 58 The Government has more authority over Union territories (former colonial territories) than it does over States, which maintain a semi-independent role in the federation. The Constitution of India went into force in 1950, three years after India achieved independence from Great Britain. The official language is Hindi. English is the secondary official language. The Constitution lists additional languages which it refers to as national languages of India. Article 246 of the Constitution of India creates three Lists (categories) of subject matter that fall within the authority of the Union (Central Government) or the States or that are subject to concurrent (dual) jurisdiction.

The Lists identify the subjects on which the Union or the States can legislate:

**List I** contains those entries (specific subjects) that are the exclusive jurisdiction of the Union. Entry 56 covers the regulation and development of interstate 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.

**List II** contains entries that are the exclusive jurisdiction of the States. Entry makes clear that everything related to water, except for an interstate river, remains under the exclusive control of States. 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 [the Union] remains within State authority.

**List III** contains entries that form the Concurrent List over which the Union and States have dual authority. There is no mention of water in this list. Thus, interstate waters remain under Central Government control if Parliament enacts legislation pursuant to Entry. Every other aspect of water and river management remains under State control. If there is a conflict between States over the meaning of those provisions, the States may take their dispute to the Supreme Court, which has original jurisdiction to hear cases between States.

### **Legal Mechanisms for Resolving Disputes**

The year 1956 was important in India's history. Parliament that year passed the States Reorganization Act, which redrew State boundaries to consolidate populations who spoke the same language. With these redrawn boundaries came a host of new problems on interstate rivers. Management of these waterways became more fragmented: new States now had a river in their territory and they had their own issues and solutions they wanted to implement. Consensus became more difficult. In response, Parliament enacted two companion statutes. The first statute authorized creation of interstate river boards to advise and help develop interstate rivers. The second statute created special tribunals to adjudicate interstate water rights e.g. in circumstances when the cooperative approach of the river boards does not work or

when the States do not want to create a river board in the first place.

**River Boards Act of 1956**

The River Boards Act allows States to request that the Central Government create a board to advise the governments on any matter concerning an interstate river and to help prepare multi-purpose schemes for regulating or developing these waterways. The list of potential activities is comprehensive: the conservation, control and optimum use of water resources, as well as the promotion and operation of schemes for irrigation, water supply, drainage, hydroelectric power, flood control, navigation, reforestation, soil erosion and pollution. Nonetheless, the River Boards Act has remained dormant. No river boards have been created in the last 55 years, a reflection of the high degree of suspicion by States, who fear that the river boards will give the Central Government too much influence over State infrastructure, particularly irrigation canals.

**Inter-State Water Disputes Act of 1956**

The Inter-State Water Disputes Act allows States to file complaints with the Central Government and request the creation of a special court, a tribunal, to adjudicate water disputes. If the Central Government concludes the dispute cannot be settled by negotiations, it creates a Water Disputes Tribunal under the Act. On some rivers, the Central Government tried to broker a negotiated agreement, calling meeting after meeting of State officials to reach an accord. Several years lapsed after the initial State request for a Tribunal. When the Central Government finally concluded the negotiation effort was fruitless, it established an interstate Tribunal (Anand, 2007). Under the Act, Tribunal members include a Chairman and two other members, nominated by the Chief Justice of the Supreme Court, who are current judges of the Supreme Court or a High Court. The Tribunal hires two or more assessors who provide a range of scientific, engineering and other technical advice. The Central Government plays no role in fact-finding. When the Tribunal is finished, it issues a written decision called an award. The typical award is a lengthy document addressing each State’s complaint and the resolution.

**Table 1. Interstate Water Disputes Tribunals in India**

#	Name of Tribunal	Start Date	Final Award	Time (years)
1.	Krishna River I	1969	1976	7
2.	Narmada River	1969	1979	10
3.	Godavari River	1969	1980	11
4.	Ravi-Beas Rivers	1986	-	25
5.	Cauvery River	1990	2007	17
6.	Krishna River II	2004	2010	6
7.	Vansadhara River	2010	-	-
8.	Mahadayi River	2010	-	-

The Tribunals have typically relied on the principle of equitable apportionment to divide the rivers and settle conflicting State claims. But equitable apportionment whether in India or the United States is something of a vague concept (The Hindu, 2011; 2003). The Tribunal must balance the competing factors that go into apportioning the waters, such as population, existing and prior uses, hydrology, the State’s contribution to river flow and other variables. After the Tribunal’s decision is released, the States or the Central Government may (after 90 days) request an explanation or clarification. Until those follow on issues are resolved, the Central Government will not certify the Tribunal decision and publish the final award. Delays of months or even years are common. When the clarification process is finished, the Central Government publishes the Tribunal’s decision in the Official Gazette and its decision then becomes binding on the States.

**Bar of jurisdiction of Supreme Court and other courts**

Notwithstanding anything contained in any other law, 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 this Act. But in practice the Supreme Court has allowed limited appeals to proceed. In 2007, for example, several States filed special petitions in the Supreme Court, seeking to review the 2007 award by an Inter-States Water Disputes Tribunal for the Cauvery River in peninsula India. Four years after receiving the appeal, the Supreme Court has not issued an opinion.

Even more troubling is the attempt at nullification now before the Supreme Court concerning the award of a 1986 Tribunal in the long-standing dispute over water in the Ravi-Beas Rivers in northwest India. The Central Government has yet to publish the final award. In 2004, the State of Punjab passed a law expressly disavowing any responsibilities to the neighboring State of Haryana to supply surplus water from the Ravi-Beas system. Seven years after receiving a Presidential Reference for an opinion, the Supreme Court has not issued an opinion. Voluntary Agreements between the States in India may also settle water disputes by signing agreements among themselves. In India, unlike the United States, the Constitution is silent about interstate agreements. They are not expressly authorized or prohibited. But there are several statutes, including the Inter-State Water Disputes Act itself, which by implication assume that the States can sign agreements among themselves to address common problems. Unfortunately, these agreements are rarely analyzed in academic research. According to the Central Water Commission, there are 125 separate interstate water agreements. Some agreements date back to the time when India was a British colony. Others were executed in the early 1990s. But the Central Water Commission itself has not published interstate water agreements since 1995 (The Inter-State River Water Disputes Act, 2012).

Three examples illustrate the diversity in these interstate water contracts. In southwestern India, water from behind a dam built in 1886 on the Periyar River in the State of Kerala is diverted into canals and moved to the State of Tamil Nadu, pursuant to the terms of a 999 year lease agreement. In northwest India, the Gang Canal, one of the oldest irrigation systems in the State of Rajasthan, diverts water from the Sutlej River in what is now the State of Punjab, pursuant to a contract signed in 1920. An agreement in 1994 created the Upper Yamuna River Board to manage part of the Yamuna River north of Delhi. A final way to resolve interstate disputes is for the Central Government to create its own board, commission or authority composed of Central Government and State officials to manage

certain aspects of an interstate river. These entities are typically not created by contract but by special legislation or a memorandum of understanding (National Water Policy, 2012).

**Table 2. River Boards, Commissions and Authorities**

#	Name of Board	Date Created
1.	Tungabhadra Board	1953
2.	Bhakra-Beas Management Board	1966
3.	Ganga Flood Control Commission	1972
4.	Betwa River Board	1976
5.	Bansagar Control Board	1976
6.	Brahmaputra Board	1980
7.	Narmada Control Authority	1980
8.	Upper Yamuna River Board	1994
9.	Krishna River Implementation Board	2010

The boards, commissions and authorities rely on the Central Government to play a dominant role and are under its control. They are not the river boards contemplated by the River Boards Act of 1956, which anticipated that the States would form interstate boards with minimal oversight by the Central Government. Some boards, like the Tungabhadra and Bansagar, manage a single hydroelectric and irrigation diversion project (Chavan (2011)). Others, such as the Ganga Flood Control Commission, provide advice. The Brahmaputra Board covers seven States in northeast India that lie within the Brahmaputra River watershed (shared with Bangladesh) but it has no power to allocate water among the seven States in India. Rather, its duties include the preparation of a master plan for India's share of Brahmaputra waters. The Upper Yamuna River Board allocates waters and provides coordinated management on the Yamuna River between its source in the Himalayan Mountains and Okhala Barrage near Delhi, a distance of approximately 350 kilometers (213 miles).

**Case Study of Krishna River**

The Krishna River begins in the Western Ghat, a mountain range that runs north-south along the western coast of India. From its source the Krishna River flows east for 1,392 km (870 miles) before emptying into the Bay of Bengal. The river drains parts of three States: Maharashtra (where the river begins); Karnataka (the middle riparian)

and Andhra Pradesh (furthest downstream). The Krishna River basin is home to 74 million people. Parts of the basin are heavily industrialized with hundreds of factories. Except for the upstream area in the Western Ghats, the Krishna basin is largely arid and receives approximately 90% of its annual rainfall during the six-month monsoon season (May to October). The first irrigation projects in the basin were built in 1855, when India was part of the British Empire. As the basin population grew, the States signed water allocation agreements with each other, first in 1892 and again in 1933, 1944 and 1946. Two pieces of legislation, the 1953 statute creating a new State of Andhra Pradesh and the 1956 States Reorganization Act, changed important boundaries in the Krishna River basin and consolidated a number of States. But disagreements over water continued. Then, in 1969, in response to a petition from three States, the Central Government invoked the Inter-State Water Disputes Act and created the Krishna Water Disputes Tribunal, the first time the government had established a tribunal under the legislation. Four years later, the Krishna Tribunal issued its award. Additional requests from the States for clarification forced the Tribunal to reexamine certain assumptions and decisions (The Hindu, 2011).

## CONCLUSION

India has a good reason to pursue similar non-litigation alternatives. The jurisdictional conflicts between the Inter-States Water Disputes Tribunal and the Supreme Court add years of delay and make the process of equitable apportionment an opaque exercise. Several States in India have now attempted to have the Supreme Court rule on issues that are directly related to river management, despite the language in the Inter-State Water Disputes Act that appears to divest the Supreme Court of such jurisdiction. Furthermore, the Supreme Court has taken years to decide these cases. It can reach agreement between themselves easier than States in the United States, where a water apportionment agreement requires Congressional consent. In India, no such consent is required. Furthermore,

States in India can, if they wish, request that the Central Government constitute a river board to engage in comprehensive basin-wide planning. As a result, many of the interstate agreements in India are old or they address operations at a single dam or project. India needs to find an alternative mechanism for resolving interstate water disputes.

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