

An Analysis on the Necessity for Adopting ADR Systems in Resolution of Inter-State Water Disputes in India

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Abstract

Alternative dispute resolution mechanisms are becoming very popular in today's modern world. Uday Umesh Lalit who was the 49th chief justice of India in 2021, said that he resigned himself from the interstate water dispute which took place between the state of Telangana and the state of Andhra Pradesh. The Chief Justice of India explained his justifications for distancing himself and recommended that the states should make an attempt to resolve the disputes through

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one of the alternative dispute resolution mechanisms that is mediation and arbitration. Conflicts over the rivers that are the major source of water resources in the states through which they flow are called interstate water disputes. The center created interstate water tribunals to settle disputes involving the use, allocation and exploitation of water bodies in order to prevent further disputes in this regard. The paper aims at investigating how the interstate water Tribunal system affects state to state disputes. In order to have a better grasp the situation which affects multiple States the interrelationship between the federal system and interstate water tribunals is also examined. The paper will attempt to give a detailed evaluation of the tribunal's Act that has been in action in connection with the interstate water disputes and assesses the extent to which they have been successful in resolving are which theaters deficiency along with the current flaws.

Keywords: *Alternative Dispute Resolution System, Interstate Water Disputes, Tribunals, Federalism, Constitution, Mediation and Arbitration*

Introduction

In India, the States and the Union Territories each share roughly about 20 river basins. The constitution has seen the possibility of disagreements between the states over the river flows

Currently, problems arise due to the distribution of water since the river's water is regarded as a natural resource that cannot be owned by any individual². As a result, under Article 262 (1)³ of the Indian Constitution the parliament is given a separate legislative authority to establish methods for resolving the interstate water disputes. Therefore no state can make any law regulating the use of river water alone only for the use or anything related to river water for the states⁴. The dispute resolution procedures that result from this ought to inspire trust and dependence despite the fact that water disputes between the states happened regularly which have a lengthy litigation and frequently involves States regarding both the Supreme Court directive and the orders of the Water Dispute Tribunals and due to which there is currently no suitable mechanism in connection with interstate water disputes. To resolve this, The Interstate (River) Water Disputes Act, 1956⁵ was enacted was amended 12 times and also the River Boards Act, 1956⁶ included provisions for arbitration to settle state to state disagreements without the need to approach the court

² MP JAIN, INDIAN CONSTITUTIONAL LAW 1023 (LexisNexis 2018).

³ INDIA CONST. art. 262, cl. 1.

⁴ Cauvery Water Disputes Tribunal, SC 522 (1992).

⁵ Interstate (River) Water Disputes Act, 1956, No.33, Acts of Parliament, 1956 (India).

⁶ River Boards Act, 1956, No. 49, Acts of Parliament, 1956 (India).

although due to the negligence on the part of the center, the states have assumed unrestricted power over the river water⁷.

Federalism In India and Water Disputes

The government system known as federalism splits the power between the state authority and the union and the Indian style of federalism is known as “Quasi federal system” since its many elements are alike of both unitary and federalism. The state advances the objective of common good under federalism despite the substantial social, economic and cultural heterogeneity and the challenges to its founding principles have come under scrutiny recently⁸. Interstate river water disputes are those organizations that are pursuing legal action against the government's management of the Nations a river is river are the subject of disputes they have been group into Institutions to address problems and there are 3 issues which are identified :

1. The Jurisdictional Power of the State

⁷ Srinivas Chokkakula, Interstate River Water Governance: Shift focus from Conflict Resolution to Enabling Co , CENTER POLICY RESEARCH (June 13th, 2019).

⁸ WATTS. R. L, NEW FEDERATIONS: EXPERIMENTS IN THE COMMONWEALTH (Oxford the Clarendon Press 1996).

The law makers have shown in a plan that ensures that center and the state would be granted the same powers related to the federal structure for controlling the water conflict between the states under scheduled 7 of the Indian Constitution. The majority of the center's work consist on arbitrating disputes with arbitration mechanism over the interstate water disputes⁹

2. The Historical and Geographical Issue

The shifting boundaries have an impact on the existing jurisdiction that have grown into sources State wise political strife, leading to a historical and geographical ambiguity in the management of the water disputes¹⁰ and therefore the Interstate (River) Water Disputes Act, 1956 and River Boards Act 1956 were enacted.

3. Ambiguity

The Supreme Court of India has Limited mediation to arbitrated conflicts which in turn also incorporates the sanctioning of government grants, with regards to the objective engagement for

⁹ Sayanangshu Modak and Ambar Kumar Ghosh, Federalism and Interstate Water Governance in India, 294 ORF 1, 9-10 (2021).

¹⁰ S. N. JAIN, J. ALICE, J. SUBASH, INTERSTATE WATER DISPUTES IN INDIA: SUGGESTIONS FOR REFORM. IN LAW 121 (Indian Law Institute 1971).

Interstate Water Disputes, ruling that these conflicts can be resolved under Article 131 of Indian Constitution¹¹ and on the other hand Article 262¹² forbids the highest-ranking executive from arbitrating matters relating to interstate water disputes. As a result, there is institutional ambiguity regarding which body has final adjudicatory authority over such disputes¹³.

The Conflict for Krishna River Disputes

The Western Ghats, a mountain chain which spans North and South area along with India's Western coast are where the Krishna river begins and his divided among Andhra Pradesh, Maharashtra and Karnataka¹⁴. The State Reorganization Act, 1956¹⁵and the 1953 resolution is to create a second state for Andhra Pradesh which has shifted and combined the key limits of the Krishna water dispute. Nevertheless, the water related strife continues and therefore the

¹¹ INDIA CONST. art. 131

¹² INDIA CONST. art. 262.

¹³ Ivan and Vivek Mathur, Article 131: Manufacturing a 'Dispute' where none exists, SCC ONLINE (7th Dec. 2022, 6:10 PM).

¹⁴ Manognya Reddy, An Overview of Krishna River Water Dispute, LAW INSIDER INDIA (August 20th 2021, 12:15 PM).

¹⁵ The States Reorganization Act, 1956, No. 37, Acts of Parliament, 1956 (India).

government at the center enacted the Interstate water disputes act and the Krishna Water disputes Tribunal in 1969. With the creation of the second Krishna River Tribunal, the subsequent series of mediation to place in 2004¹⁶ and the amount of distribution of water was increased to a larger extent. The Tribunal however was not clear how will it distribute the water among the states during the summer season when there will be scarcity of water and therefore the Tribunal formed a committee to investigate in this matter without any provisions for binding mediation and the dispute over the Krishna river would get words as the interested States shall not be satisfied with the award of mediation and arbitration.

The Sarkaria Commission

Many recommendations were given by the Sarkaria commission in relation to interstate water disputes in its report when a state submits a petition under section 3 of the Interstate Water Disputes Act¹⁷ It should be mandatory for the Union government to include the

¹⁶ SC asks if States can settle dispute over Krishna Water allocation through Mediation, THE HINDU (February 18th 2022).

¹⁷ Interstate (River) Water Disputes Act, 1956, Sec 3, No. 33, Acts of Parliament, 1956 (India).

Tribunal in the proceedings not longer than or beyond one year from the period on which the petition was received. In order for a Tribunal to maintain its privilege for a significant amount of time after its establishment, it may be necessary to make changes to the governing legislation. If the Tribunal decides it needs more time to do so, it can choose to extend the duration of the established time period. The Interstate Water Dispute Act of 1956 provides a framework for resolving disputes between states over the use and allocation of water resources. However, over time, there have been changes in the availability and demand for water resources, as well as in the political and economic landscape of the country. These changes have led to several challenges and limitations in the current act, and there are several reasons why it needs to be amended:

1. Lack of a permanent mechanism: The current act provides for the establishment of a tribunal to adjudicate disputes, but this mechanism is temporary in nature and has to be reconstituted every time a new dispute arises. This leads to delays and hampers the resolution of disputes in a timely manner.
2. Inadequate representation: The current act provides for the appointment of a single-member tribunal, which may not have adequate representation from all the stakeholders involved in the

dispute. This can lead to a lack of understanding of the complex issues involved and may result in a suboptimal resolution.

3. Limited scope: The current act covers only inter-state disputes and does not address intra-state disputes, which are becoming increasingly common. This leaves a significant gap in the legal framework for water resource management in the country.

4. Ineffective enforcement: The current act does not provide for effective enforcement mechanisms, which can lead to non-compliance with the tribunal's orders and a lack of accountability.

5. Lack of provision for climate change: Climate change is expected to have a significant impact on water resources in the country.

The Interstate council's latest subcommittee gave all these suggestions and additionally the committee accepted the suggestions. The central government increase the time period for the establishment of the Tribunal for 2 years and later under the direction of the Union Minister of Home Affairs the interstate chamber had its fifth meeting and the secretariat of the chamber organized and agreement paper based on the recommendations of the sarkaria commission¹⁸.

¹⁸ Department of Water Resources, River Development and Ganga Rejuvenation, The Sarkaria Commission (8h Dec 2022).

Obstacles with The Mechanism Of Inter-State Water Disputes Act, 1956

The effectiveness of the dispute resolution mechanism to mediate the water tensions in certain regions will determine the outcome of the interstate water disputes. If the system for resolving disagreements is effective then disputes will always arise and continue. The Clash between the states as to who will utilize the water have the authority over it and administrator it is leading to disputes and unnecessarily¹⁹. Hence, the process employed to resolve conflicts arising from this issue should evoke confidence, and the legal proceedings, including the time taken and decisions made by the Supreme Court, need to be adhered to in the Tribunal's judgments. The history of water disputes in India may account for why this is not always the case. There is no doubt on the fact that agreement between the states is mutually always preferable than litigation as a method of settling the dis agreements whether it is relating to dispute of river water or any other dispute.

In order to resolve disputes in relation to river water instead of using the ADR mechanism of negotiation which is not quite effective can

¹⁹ Iram Majid, A Perpetual tussle over Water Resources: An inevitable need for Inter-State Mediation in Inter-State Water Disputes, SCC ONLINE (March 27th 2021).

be resolved through mediation and conciliation by the states then opting for the long process of adjudication in the court. The central government can set up a Tribunal only after fully satisfying that there is no other alternative dispute mechanism other than the mechanism of mediation or arbitration or any other ADR systems. It is also argued that if there is good will existing between the states that is no need for adjudication although if there is no trust then every mediation, negotiations as well as arbitrations won't work out in resolving the disputes²⁰.

Necessity to Settle Dispute of Inter-State Water between States Through Mediation And Arbitration

Due to the interstate water disputes it is leading to scarcity of opportunities and assets funds which is detrimental to our country. Mediation is the best option to resolve the interstate water disputes as it gives both the states reasonable opportunities to represent themselves and state their effects issues and suggest remedies for the same and the mediator will only facilitate the conversation which

²⁰ Ramaswamy R. Iyer, Inter-State Water Disputes Act, 1956: Difficulties and Solutions, 37 EPW 2800, 2907-2910 (2002).

takes place between the parties. Nevertheless, the issue arises as a result of no proper mechanism to advocate the mediation proceedings in respect of mediation. An unbiased third party oversees only a restricted part of the mediation process, and the final decision-making power and responsibility ultimately lie with the parties involved in the dispute. Mediation can be viewed as another method to resolve the interstate water disputes which is logical democratic and advantageous wherein the states plainly play an important role as the parties who communicate discuss the interest and share their expectations with each other. Mediation is a very effective system wherein it influences the parties to agree on the terms of settlement. There is also article 262 of the Indian Constitution where in it seems to set up a Council for interstate permanently which can help in carrying out of dispute resolution procedures of mediation²¹. There is also a bill pending in the Parliament regarding the Interstate River Water Dispute Amendment Bill which seeks to establish a separate committee for dispute resolution which will be the first time an attempt to resolve interstate water disputes and its preferable if that committee and the bill includes the ADR mechanism to resolve the

²¹ M.P. JAIN, CONSTITUTION OF INDIA 1016 (Lexis Nexis 2018).

interstate water disputes and shall be compulsory for them to approach ADR mechanisms.

Conclusion

The hindrance in searching for a suitable method or mechanism has not succeeded in offering a successful solution to the issue relating to interstate water disputes. In a larger context it has had a greater impact on the investments of mostly the agricultural part for food grains and other purposes. Therefore, one of the best mechanisms to deal with the interstate water disputes is through the process of arbitration and mediation. The fact that there is now no binding effect of arbitration which is the big issue as the states if not satisfied can appeal. The loss should be made in such a manner or within if the states prefer to resolve cases and arbitration of mediation should be binding on them and there should be no scope of appeal in the case. If both parties are in agreement and the situation is like a windmill, then it is possible to accomplish all of this. However, if the parties are not treated fairly and equally, the central government has an important role to play in resolving the disputes. It is the responsibility of the government to introduce methods to improve the process of arbitration and mediation. Also the interstate river water disputes bill is hoping to bring in a positive outcome full stop never the less one of the best

ways to resolve the disputes between the states is the blend of both arbitration and mediation for a better outcome and the central government should mandatory as the states to resolve any of the disputes including the water disputes through the mechanism of any of the alternative dispute resolution systems and settle the matter for the good of both the parties.