

## CONSTITUTIONAL MECHANISM TO RESOLVE INTER STATE RIVER WATER DISPUTES<sup>1</sup>

- by *Brijraj Deora*

### INTRODUCTION

India being a federal country the federal features outweighs the number of unitary features in Indian Constitution. The Supreme Court has also affirmed that Federalism is a part of the basic structure of the Constitution and this proposition is now a well settled one. Interstate river disputes are indeed considered as an important federal issue. In every federal constitution including India, the states normally act as independent units in the exercise of their internal sovereignty and due to this, conflict of interests between units are bound to arise. Hence, in order to maintain the strength of the Union against such disputes, it is essential that there exist adequate provisions for judicial determination of disputes between the units and for settlement of disputes by extra judicial action as well as their prevention by consultation and joint action.

India being a federal state, and because rivers cross state boundaries, constructing efficient and equitable mechanisms for allocating river flows has long been an important legal and constitutional issue since the very conception of this state. Numerous inter-state river-water disputes have erupted since independence because of the mishandling of disputes by the Centre and Federal units. The waters of inter-state rivers pass through several states and such waters cannot be regarded as belonging to any singly riparian state. The waters are in a state of flow and no state can claim exclusive jurisdiction over it.

To prevent any such discrepancies in Centre-state relations the framers enacted Articles 262 and 263 of the Constitution of India which provide for Disputes

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relating to Water. Article 262 (1) empowers the parliament by law to provide for adjudication of any dispute or complaint with respect to the “use, distribution or control” of waters of any inter-state river or river valley. The words "use, distribution and control" are of wide import and may include regulation and development of the said water.

Article 262(2), Parliament may also provide that, notwithstanding anything in the Constitution, neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint. But the jurisdiction of the Supreme Court would be barred only for the disputes pertaining to “use, distribution or control” of waters of any inter-state river or river valley. Article 263 provides for setting up of an Inter- State Council for the settlement of disputes between the Union and the States as well as between the States. In order to understand it further we shall be discussing about the Krishna and Yamuna-Sutlej river water dispute.

The Krishna Water Dispute is a dispute in relation to the sharing of water of the River Krishna between the states of Maharashtra, Karnataka and Andhra Pradesh and post the partition of Andhra Pradesh, Telangana as well. This dispute has been in existence before the commencement of the constitution and the reference was made to the tribunal in 1969. The tribunal framed important issues and came out with the findings. Schemes A and B were drawn up in the final order. Thereafter the original suit was filed by the State of Karnataka, which led to constitution of the second tribunal and the present position.

The Sutlej-Yamuna Link canal dispute is mainly a dispute between Punjab and Haryana though Rajasthan and Himachal Pradesh. This dispute involves of two types of issues that is dispute regarding the allocation of water and the dispute over SYL canal, an original suit filed under Article 131 of the constitution by the state of Haryana against the State of Punjab and UOI, the 2004 legislation, the Presidential reference under Article 143 and the present position.

The most important feature of these two major water disputes is the undue delay which has been caused in setting up the tribunals and the lethargy with which the central government has dealt with these matters. This research article has dealt with it from both a constitutional and federalist perspective. The waters are in a state of flow and no state can claim exclusive jurisdiction over such waters.<sup>2</sup> No state can even legislate over such waters as no state can make laws beyond its territorial limit.<sup>3</sup>

### **Constitutional Safeguards**

India being 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 because of the mishandling of disputes by the Centre and Federal units.<sup>4</sup> 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. The relevant provisions of the Indian Constitution are:

- Entry 17 in the State List (Subject to Entry 56 of Union List);
- Entry 56 in the Union List; and
- Article 262.

It is a well settled principle that no state can claim exclusive ownership of such waters so as to deprive the other states of their equitable share. Therefore, such exploitation resulted in bitter disputes between the component units insofar as sharing and usage of the water was concerned.<sup>5</sup> In the present case we would analyze the Krishna river dispute and the Yamuna- Sutlej river dispute largely

<sup>2</sup> In re: Cauvery Water Disputes Tribunal, AIR 1992 SC 522.

<sup>3</sup> MP JAIN, INDIAN CONSTITUTIONAL LAW 714 (Wadhwa Nagpur 5<sup>th</sup> Ed. 2007).

<sup>4</sup> MAHENDRA PAL SINGH, VN SHUKLA'S CONSTITUTION OF INDIA 593 (Eastern Book Company 12<sup>th</sup> Ed. 2013).

<sup>5</sup> 3 HM SEERVAI, CONSTITUTIONAL LAW OF INDIA 3245 (4th ed. 2004).

involve a Constitutional and Statutory Analysis of these disputes and their redressal mechanisms. We would also discuss the exercise of the jurisdiction by the Supreme Court despite an existence of the bar on the same.

India being a federal country the federal features outweighs the number of unitary features in Indian Constitution.<sup>6</sup> Moreover, the Supreme Court has also affirmed that Federalism is a part of the basic structure of the Constitution and this proposition is well settled and is no longer *res integra*.<sup>7</sup> Interstate river disputes are indeed considered as an important federal issue. Even the Sarkaria Commission on Centre-State Relations had laid emphasis on this aspect of federalism by devoting an entire chapter to this issue. In India, federalism, and perhaps the political economy in general, has been characterized by an over-reliance on discretionary allocation; high influence costs have followed. The pattern of inter-state water disputes is a prime example of this problem.<sup>8</sup>

In every federal constitution including India, the states normally act as independent units in the exercise of their internal sovereignty and due to this conflict of interests between units are bound to arise.<sup>9</sup> Hence, in order to maintain the strength of the Union against such disputes, it is essential that there exist adequate provisions for judicial determination of disputes between the units and for settlement of disputes by extra judicial action as well as their prevention by consultation and joint action.<sup>10</sup>

To prevent any such discrepancies in centre-state relations the framers enacted Articles 262 and 263 of the Constitution of India which provide for Disputes relating to Water. This provision confers an exclusive legislative power on Parliament to enact a law providing for the adjudication of disputes relating to use, distribution or control of waters of any interstate river or river valley. The

<sup>6</sup> 1 HM SEERVAI, CONSTITUTIONAL LAW OF INDIA 283 (4th ed. 2004).

<sup>7</sup> Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

<sup>8</sup> RB Shah, 'Inter-state River Water Disputes: A Historical Review', 4 Water Resources Development 2, 10 (1994).

<sup>9</sup> 8 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 9113 (8th ed. 2007).

<sup>10</sup> 3 JAGADISH SWARUP, CONSTITUTION OF INDIA 3109 (3d ed. 2013).

provisions clearly indicate the amplitude of the scope of adjudication was much as it would take within its sweep the determination of the extent, and the manner, of the use of the said waters, and the power to give directions in respect of the same.<sup>11</sup>

Under Art. 262(2), Parliament may also provide that, notwithstanding anything in the Constitution, neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint. Art. 131 provides for the decision of interstate disputes by the Supreme Court. But the jurisdiction of the Supreme Court would be barred only for the disputes pertaining to “use, distribution or control” of waters of any inter-state river or river valley. Article 263 provides for setting up of an Inter- State Council for the settlement of disputes between the Union and the States as well as between the States.

The Parliament in exercise of the power conferred under Article 262 has enacted the Inter- State River Water Disputes Act, 1956. Under this act the Central Government is empowered to appoint a tribunal if a Riparian state wishes to submit a dispute to the adjudication by the tribunal. In relation to jurisdiction, Section 11 of the 1956 Act excludes the jurisdiction of the Supreme Court of India in respect of any water dispute referred to a Tribunal under the Act. Therefore, Section 11 read with Article 262 (2) ousts the jurisdiction of the Supreme Court once a Tribunal is constituted.<sup>12</sup> However, this does not bar the Court from passing interim orders till before a Tribunal is constituted.<sup>13</sup>

## CONCLUSION

Inter-state river disputes have come up time and again since independence. It may be the Cauvery river dispute, Krishna river dispute, Yamuna-Sutlej river dispute, Narmada River dispute etc... The most important feature of all these

<sup>11</sup> MP JAIN, INDIAN CONSTITUTIONAL LAW, *supra* note 2, at 715.

<sup>12</sup> Inter- State River Water Disputes Act, 1956, §11, No. 33, Acts of Parliament, 1956 (India).

<sup>13</sup> State of Orissa v. Government of India, (2009) 5 SCC 492.

four major water disputes is the undue delay which has been caused in setting up the tribunals and the lethargy with which the central government has dealt with these matters. This has resulted into wide economic implications and has largely affected trade and industry of these affected areas. Nonetheless, negotiations seems to be the best opportunity at hand to resolve such inter-state river disputes to bring an end to such disputes in a speedy and efficient manner.

