

WATER WAR: POLITICIZATION AND DEMOCRACY

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ABSTRACT

“We never know the worth of Water till the well is dry.” In India, Water is the most essential resource which treats majority of the population for important purposes such as irrigation to continue farming. In India, the very basic requirement for every citizen is Water whose demand keeps on increasing due to population growth, industrialization, etc. Due to these changes and developments in India, there has been various Inter – State Disputes about sharing of these River Waters. This paper starts with a brief description about the present scenario of Water Dispute in India along with the Constitutional Provisions, the water laws and federal water bodies in India which are responsible for the management of water resources. This paper would also deal with the clash and settlement process with the help of the Indian tribunals along with the decided case studies. This paper also discusses about the negotiations for the reduction of Water Disputes with the help of Case Laws. In the end, the paper would be concluded by the measures required to decrease Water Disputes in the country along with our opinion on the same issue.

INTRODUCTION:

Indians believe a River is like a temple and to be more specific Rivers are also treated as God Mother. The rivers are treated as holy as they have their contribution through agriculture and trade in the lives of Indians. These rivers flow all-round the year and create living sustainable for us. Rivers flow all over India, crossing all state boundaries and help in development of the state. But various Water Dispute arise when the states were split up on linguistic basis. So now this essential resource i.e. River Water has created threat in the minds of Indians in the matters of uneven distribution, which leads to conflicts therein. The matter of conflict arises as demand of River Water increases with the increasing population and also agriculture, irrigation, production and development, but the supply would remain the same. In this type of condition, it is obvious that each person tries to use the River Water till its maximum fulfilment which flows through their territory irrespective of the fact that the damage each person is causing to the usage of others. The differences in opinions and interests of States who share same water body gives rise to a major conflict between them. The issue of the conflict is due to disagreement on the cost of projects and the sharing of benefits for multi-purpose river projects. The main contention is that downstream state's objection to pollution, excessive irrigation and construction of dams by upper streams states which might affect the quality of water flowing to the downstream state. This is also one of the main reason for conflict between states.

Procedure for formation of tribunal:

The following is the process for formation of tribunal when the water problems emerge between the two or more states. The central government asks the state government under section 3 of the Interstate River Water Disputes Act (ISRWD) with contemplate to the water dispute. With respect to this act first the government will attempt to resolve the dispute by discussing with the states and then the central government will form a tribunal having retired Supreme Court judges and they will give the final grant by examining the dispute in detail.

CHAPTER: 1

DIFFERENT INTER-STATE RIVER WATER DISPUTES

In India, Inter State River Water Dispute have become riotous since past few years. They are one of the leading topics in politics and also have led to numerous acts of violence. Under the following chapter, we have talked about three main issues of the dispute which are going to be as follows:

(A) Krishna Water Dispute:

Krishna River is one of the longest river in India. It originates from the state of Maharashtra, flows through Karnataka, then Telangana and then finally meets Bay of Bengal at Hamasaladevi in Andhra Pradesh. The river is around 1400 kilometres long. There are many rivers like the Ghataprabha, the Malaprabha, the Bhima, the Tungbhadra and the Musi are joining Krishna as its tributaries.

Reasons for Krishna water disputes:

There are various reasons for the evolution of the water disputes within the states. There are many states which have various rivers flowing through it and they have enough water for irrigation and electricity generation. Due to the unequal distribution of water in few states, they faced shortage of water supply. Another main reason for the dispute is that the upper stream river states have more benefits then downstream states because they can use more water. Also, there are various dams constructed on the river which creates disputes. And dues to these various dams the downstream states do not get enough water for various domestic and non-domestic uses. Due to all such reasons the need of water raised eventually and the disputes were created among the states.

History of Krishna water dispute:

The dispute is going on since colonial period and the states are distributing water on basis of agreements made between them. In 1892 there was made between the Mysore princely states and the Madras presidency states and in 1933 another agreement was made between Madras Presidency and Hyderabad princely states. These agreements were made before venture of Krishna Water Dispute Tribunal (KWDT).

Krishna Water Dispute Tribunal 1 Award:

KWDT 1 investigated in detail and announced its final award in 1973. In the previous report tribunal declared two schemes i.e. Scheme A and Scheme B but the final grant was made in Scheme A. Scheme A was concerned about the distribution of water on basis of 75% dependability while Scheme B suggested methods to share extra water. Government took another 3 years to come out with the final decision and in the end on 31 May, 1976 Scheme A of KWDT was binding on all the three states i.e. Maharashtra, Karnataka and Andhra Pradesh.

In the grant the KWDT showed the accurate share of each state. The grant affirmed on 75% dependability that total quantum of water available for distribution was 2060 Thousand Million Cubic (TMC). The water was distributed in the following manner:¹

| | |
|----------------|---------|
| Maharashtra | 560 TMC |
| Karnataka | 700 TMC |
| Andhra Pradesh | 800 TMC |

Tribunals also fully permitted the states to use their allocated part of water for any project as per their plan. As per clause V and VII of final order of KWDT 1 a state can fully use its allocated water in any water year (in case of deficit water year also) by utilising the carry over storage facility. A state can create carry over storage during the years when water yield in the river is in excess of 2060 TMC plus entitled return flows to use in the water year when water yield in the river is less than total entitlement (nearly 2130 TMC).²

Scheme B

In scheme B, the tribunals have declared that the extra water which is free in the river basin is totally 330 TMC. It was clearly declared that it would be distributed within the riparian states of Maharashtra, Karnataka and Andhra Pradesh in the proportion of 25%, 50% and 25% respectively. Scheme B also stated that the water of Krishna river will be shared in the ratios to Scheme A when the water in the river will be less than 2060 TMC.

¹"UKP third phase: record land acquisition planned in single year". Retrieved 29 July 2015

²Delhi: Manager of Publications, Government of India, Report on Centre-State Relationships Administrative Reforms Commission of India, June. 1969.

Scheme B complicated the authority of constitution to guard the execution of the scheme. The constitution of such an authority is outside capacity of tribunals under the Inter State Water Dispute Act, 1956. So, as a result Scheme B was strike out and Scheme A was presented to government for the final alerts.³

Krishna Water Dispute Tribunal II:

The Tribunal was controlled by Brijesh Kumar, a former judge of Supreme Court of India. It gave its grant on 31 December, 2010. In relation to this grant the obtainable water is divided based on 65% dependability, by considering the data of flow of past 47 years. The following shows the allocation of water:⁴

| | |
|----------------|----------|
| Maharashtra | 666 TMC |
| Karnataka | 911 TMC |
| Andhra Pradesh | 1001 TMC |

The tribunal had also limitations on these three states in possessing the depend abilities at which distribution has never been made. The grant will be official till May, 2050 and this can be re-examined by reasonable or skillful authority or tribunal in later period.

The KWDT II hasn't opposed in expanding the height of Almatti dam from 519 m to 524.25 m which expands storage power of the dam but it was opposed by the Andhra Pradesh as they seem that they may not get the water adequately for the vital projects present in it.

The leader of the tribunal Brijesh Kumar urge the central government of India for establishment of Krishna Water Implementation Board after three of execution of the grant.

³ Almatti dam height SCC.

⁴ Review of Justice Brijesh Kumar tribunal report (Krishna water Dispute Tribunal 2)

Tribunal grant ordered all the three states to donate 3.30 TMC feet of water by every state to Chennai city for consuming between July and October and 1.70 TMC feet divided in four even parts between January and April.

Legal Case:

State of Andhra Pradesh v. State of Karnataka

In the following case, there stood up two main issues which was firstly related to the Agreement of 1951 which was made up by the riparian states. So, the validity of that agreement was being challenged. It was concluded by the Tribunal that the projects which were in operation before 1960 shall be given preference of contemplated use and shall be protected. For the projects, which came into existence after 1960 shall not be given any kind of priority. The second issue which came up in the following case was about diverting of Krishna River Water by Maharashtra so that hydroelectric power can be generated on Western Ghats. The tribunal finally gave its decision and it was decided that irrigation shall be given preference for power. It was also legalised if Krishna River water is being diverted outside river basin but only till the boundaries of the Riparian States.

In the present scenario, Andhra Pradesh has a fear that there would be more projects and dams in the upper riparian states. So the states such as Maharashtra and Karnataka, in tribunal of 2011, it was stated that these states have been utilising more water than originally acquired. But soon this fear about allocation of the resource was dismissed, it was said that each state is going to utilise amount of water which has been allocated to them.

The next contention which was raised was about the Almatti Dam. It was about that tribunal had allowed Karnataka to increase the height of the Almatti Dam across Krishna River. It was argued by the Andhra Pradesh that if the height of the dam is increased, the storage capacity would be increased by 130tmc. Due to this there was a fear that the water which was released in the State of Andhra Pradesh would be delayed as water will firstly reach Karnataka and then Andhra Pradesh. The following delay could lead to late harvest.

The next matter which came into existence was tribunal's stand on surplus water. Every riparian state has rights on the surplus water. According to the Bachwat tribunal, there was right to use the surplus water but Andhra Pradesh did not have any right over surplus Water.

(B) Cauvery Water Dispute

The river Cauvery originates at Talakaveri in Western Ghats in Karnataka and then flows through south and east Karnataka and Tamil Nadu over Deccan Plateau and then finally ends in Bay of Bengal. The river is 765 kilometres long. The major rivers like Shimsha, Hemavati, Arkavati, Honnuhole, Lakshmana Tirtha, Kabini, Bhavani River, Lokapavani, Noyyal and Amaravati River joins the Cauvery.

History of Cauvery water dispute:

The dispute started in mid nineteenth century when Mysore and Madras was under British Rule. During that time, various schemes were made for the utilization of Cauvery water by Madras and Mysore. But due to the drought which came up in mid 1870s the scheme was kept on hold. In 1880 Mysore called up a meeting study that scheme again which was held up. Then after certain negotiations and arguments the deal was signed between two states in 1892.⁵

In 1910 both the states i.e. Madras and Mysore thought to build dams on Cauvery. So, the British government allowed Mysore to construct the dam on the river. But Madras refused to give its consent because they have their own scheme of building Mettur dam. So, from this stage the dispute on the waters of Cauvery started. The proceedings for the dispute started after three years i.e. from July 1913 and the grant was given on May 1914 i.e. after a year. But further Madras Appealed against the decision which went on for 10 more years and in 1924 the decision came and both Mysore and Madras can use surplus water of Cauvery.⁶

In 1956 the boundaries of states were made again and as a result of this Kerala and Puducherry also claimed their right on Cauvery water. Tamil Nadu had also started depending upon the river water because they have expanded many agricultural land in the state. Later in 1972 central government gave its consent to set a committee who will gather the data from Kerala, Tamil Nadu and Karnataka who has river basins.

⁵Tamil Nadu to immediately approach SC against Cauvery panel's ruling, The Times of India, September 24, 2012.

⁶ interstatedisputes.wordpress.com

Later in 1990s the Supreme court guided the government to form a tribunal and go through all the disputes. A tribunal of three people were formed and the demands of the state were seen. Later in 1991, the tribunal gave its award after calculating the average inflows into Tamil Nadu over 10 years.⁷

In 1995 due to shortage of water Tamil Nadu asked supreme court to release 30 tmcft of water but Karnataka and supreme court did not agree to grant the water. Later in 1988 Cauvery River Authority was formed.

After 16 years in 2007 the Cauvery Water Dispute Tribunal came out with the conclusive grant. The grant was as follows:

| | |
|------------|---------|
| Tamil Nadu | 419 TMC |
| Karnataka | 270 TMC |
| Kerala | 30 TMC |
| Puducherry | 7 TMC |

After this grant, there were certain issues occurred in the middle years in between the states and then finally the central government published the final grant of Cauvery water dispute in February 2013.⁸

Legal Case:

Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam Vs. Union of India and others, AIR 1990 SC 13116

In this case under article 32 of constitution of india an application was filled by Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam which is a registered society under the Tamil Nadu Societies Registration Act asking this Court for direction to the Union of India. The reason behind filling the application was that the court can straight away order the Union of India to carry out certain act and also for Mandamus to state of Karnataka not

⁷Ministry of Water Resources, GOI – <http://wrmin.nic.in/index3.asp?sslid=393&subsublinkid=376&langid=1>

⁸Ministry of Law and Justice, "[A Background Paper on Article 262 and Inter-State Disputes Relating to Water](#)". Retrieved January 11, 2017

to build dams, reservoirs and various other plans over the river and any of its side stream and to extend the contribution of water to Tamil Nadu as mentioned in agreement of 1924.

The petitioner mentioned that as the Tamil Nadu state has major agricultural farmers so they have lower riparian rights of the Cauvery water for cultivation of their land. They also mentioned that the water of Cauvery river at Mettur dam been reduced as there were many other dams built on that river by the state of Karnataka. The states of Karnataka requested Union of India to for tribunal in the year 1970, but its wasn't formed due to various political matters. The grievance raised by the Karnataka mentioned that petitioner cannot asked for the relief as it wasn't filled by the states of Tamil Nadu. Finally, the supreme court of India mentioned that section 4 referred with Section 3 of the Act says that if any dispute is not solved by negotiation then the central government can form a tribunal to solve the problem. So therefore, in this case supreme court guided the central government.⁹

In re Cauvery Water Dispute Tribunals Case, AIR 1992 SC 522

In this suit the key dispute was form concerning the reasonability of the ordinance passed by the Governor of the state of Karnataka. So, the question here is that whether the ordinance passed by the governor of Karnataka is efficient of providing the interim relief to the states in the dispute. The supreme court says that The Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 passed on 25th July, 1991 by the Governor of Karnataka doesn't come in the legislative competence of the state.¹⁰ So, the ordinance is beyond the authority of the constitution of India. Another issue lifted up was whether the order passed by the tribunal on 25th June comprises the solution and comes within the meaning of Section 5(2) of Inter-State Water Disputes Act, 1956. Here the supreme court mentioned that the order has to be produced in the official gazette of India under Section 6 of the Inter-State Water Dispute Act, 1956 so as to make it valid.

State of Tamil Nadu Vs State of Kerala and others, 1991 SCR (2) 501, 1991 SCC Sup. (1) 240.

⁹AIR 1990 SC 13116

¹⁰AIR 1992 SC 522

In this case the state of Tamil Nadu had apply a petition concerning no accessibility of the water of Cauvery as the government of Karnataka was not following the deal made between both the states. Because of this reason the state of Tamil Nadu filled many petitions so as to release the water. The petitions filled by the state of Tamil Nadu was contradicted by the state of Karnataka on the basis that tribunal do not have authority to award an interim relief and it only has authority mentioned under Act on the other hand there was no such law which would define that the tribunal has power or has jurisdiction to award an interim relief. “The state of Karnataka moreover asserted that according to the Section 11 of this Act the Supreme court nor any other court has the jurisdiction to refer the water dispute which has already been referred to a tribunal under this act.”¹¹ Tamil Nadu moreover contended that even though the supreme court may not have authority to adjudicate its jurisdiction of the tribunal under this act. The supreme court should guide the tribunal consider their appeal if they have falsely rejected consider by mentioning that they do not have the power. Besides this the tribunal also said that they only have ancillary and inherent jurisdiction to site which does not include the power to award the interim relief. The supreme court noticed that the decision dated 2-6-1990 plainly exhibits that the central government has mentioned the Cauvery inter-state water dispute and the tribunal had made a significant mistake by ignoring the main letter of 6-7-1986. Hence, by this letter it was simply exhibited that the dispute was previously mentioned to the central government under section 5 of the act. Therefore the tribunal have right to listen the C.M.Ps.

In the present situation, Supreme Court has given the orders that the day-to-day hearing on the case of Cauvery Water Dispute would be done by the Supreme Court against 2007 award of Cauvery Water Dispute Tribunal. In the recent orders it had been decided that Karnataka shall release River Water to Tamil Nadu until further orders.

(C) Satluj Water Dispute:

¹¹1991 SCR (2) 501, 1991 SCC Sup. (1) 240

Satluj river is one of the longest river in Northern India. Its 1500 kilometres in length. It flows through Punjab and Haryana. Now, Punjab and Haryana are the prominent states in the disputes mainly because of agricultural reason. Both the states are majorly involved in agriculture area and they used to provide food grains to rest of the states in India. In the beginning the deal was made in 1960 for the distribution of river water.

The state of Haryana was granted 3.5 MAF by the union government in the Ravi Beas water dispute by Tribunal in 1976. The prevailing canal structure not being proficient of utilising 3.5 MAF water granted to the state of Haryana. It guides to the thought of Sutlej Yamuna Link Canal.

In 1981, the government of India progressed the Sutlej Yamuna link canal plan by approving 499.12 crores to Punjab but Punjab wasted more than 600 crores on the plan by finishing 90% of the work and later on they left it incomplete. A petition under Article 131 of Constitution of India was filled by the state of Haryana in the supreme court for resolution of the issue.¹²

The main issue:

1. Whether that the “water dispute” defined under the Interstate Water dispute act 1956 section 2(c) clause (i) and (ii) is not included the disputes of canals.
2. If the canals are not defined under the ISWD Act, then can the dispute is filed under article 131 in Supreme Court.

The decision:

The Supreme Court held that the water dispute stated in ISWD Act section 2(c) clause (i) and (ii) is very much within the validity of the section and the union government has the authority to make a tribunal under article 262 and section 11 of ISWD Act to try on problems involving building of canals also.

So, the Supreme Court cannot invade into the area of legislature and also the Article 131 cannot decide the problem.¹³

¹²Ramana, M.V.V, Inter-State River Water Disputes in India, (Madras: Orient Longman, 1992) p.6

¹³The Constitution of India, 1950, art. 131

This problem has now been ended by the order of the court in 1978 (1) SCR 1 State of Rajasthan and Others etc. etc. v. Union of India etc. which noted previous decision of this Court in 1970 (2) SCR 522 State of Bihar vs. Union of India and another.

Additionally, the simple language of article 131 of the constitution of India simply exhibits that this court has only restricted jurisdiction to judge cases filled by the states or cases between states and union government. Thus, article 131 accordingly, will not be considered.¹⁴

It was eventually explained properly that the building of canal does not appear under Section 2(c) of the ISWD Act. And the order was given by the supreme court that the State of Haryana has a license to allow them to pull water in surplus of the water that has previously been granted and in the happening the tribunal, which is still viewing the suit of re-allotment of the water, permits any surplus water to the State of Haryana, then it may also view issuing proper guidelines as to how much of the water could be pull through the SYL Canal. Hence, the plaintiff's case is ordered on the above-mentioned terms. There will be no order as to costs.¹⁵

In a country like India, which is on the urge of development, Inter State River Water Dispute must be resolved quickly so that the citizens are able to use their own resource properly and also in terms of Economic Development. It is not only the Government but we Indians also would have to take measures to save our own resource. We ourselves understand our own need better.

CHAPTER:2

CONSTITUTIONAL PROVISIONS TO RESOLVE DISPUTE

It is the State which decides for us how we Indians shall use our own resource. There is a possibility that the measures taken for one state might affect the usage of River Water for the adjacent state. Like building up of dams might cause inundation in the states through which the River passes. The various problems going around our Holy River determine that we are in a need of coordinated approach so that the resource reaches every Indian in sufficient amount.

¹⁴. Constituent Assembly Debates, Book No.4 Vol. No. IX P.1189-1192.

¹⁵Shah, R.B, Inter-state River Water Disputes: A Historical Review, 175-189, (1994)

Our Indian Constitution states that State Government has the jurisdiction to make laws with respect to distribution of Water Resources.

The Government of India (GOI) Act of 1935:

The Government of India Act, 1935 deals with the River Water disputes between two provinces or between a province of British India and federated Indian State. Entry 17 of the State List in the Constitution of India includes “water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power”. The provisions led down that a province or a princely state could complain to the Governor General. If the Governor General considered that the issues involved were of sufficient importance, he was required to appoint a commission to investigate the matter and to report to him. After considering the report he was to give a decision he deemed proper.

ARTICLE - 246

Article 246 of the Constitution deals with the subject matter of laws to be made by Parliament and by the Legislatures of the States. The allocation of responsibilities between the Centre and the States in respects of laws to be made fall into three categories –

- i) The Union List (List – I)
- ii) The State List (List –II)
- iii) The Concurrent List (List –III)¹⁶

Subject of ‘**water**’ is a matter at Entry 17 of List –II, i.e. State List. This Entry is subject to the provisions of Entry 56 of List –I, the Union List. The specific provisions in this regard are as under:

- **List - I Union List (Entry 56):** 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.¹⁷

¹⁶ The Constitution of India, 1950, art. 246

¹⁷ Entry 56 of List I, India Water Portal, <http://www.indiawaterportal.org/articles/entry-56-list-i-and-entry-17-under-list-ii-seventh-schedule-ministry-water-resources-2010>

- **List - II State List (Entry 17):** 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.¹⁸
- **List III - Concurrent List (Entry 20) :** There is no entry on water but there is an entry on planning, under “Economic and Social Planning”. Since water is a significant input in agricultural development and industrial development, which are indicators of economic development, and since water is a primary need (drinking and sanitation) for social planning, water resource development could be covered under Concurrent List also. Only Entry 17 of List II has been in operation all along. However, Entry 20 of List III (Concurrent List) could be also said to have operated indirectly in view of the fact that the Central Government, through the Planning Commission, has to clear Water Resources Development projects for investments if these projects are to be eligible for central funds. Legislative outcomes.¹⁹

ARTICLE - 262

Article 262 of the Constitution deals with adjudication of water disputes. The provisions in this regard are:

Article 262 (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, or in, any inter-State river or river valley.

Article 262 (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).²⁰

¹⁸ Entry 17 of List II, India Water Portal, <http://www.indiawaterportal.org/articles/entry-56-list-i-and-entry-17-under-list-ii-seventh-schedule-ministry-water-resources-2010>

¹⁹Constitutional Provisions and Central Water Laws, http://www.cwc.nic.in/newsite/Documents/Constitutional_Provisions_and_Central_Water_Laws.pdf

²⁰ The Constitution of India, 1950, art. 262

“Water Rights” can be defined as the right to use water. The Indian Easements Act, 1882 states that the Government of India has the right and power to regulate collection, detention and distribution of flowing of River Water and Streams.

With the objective of promoting integrated development of the water of inter-state rivers, the Parliament of India had enacted the River Boards Act (RBA) 1956, under Entry 56 of List I. This act contemplates the constitution of river boards by the Government of India in consultation with the State Governments.

Most big rivers in India are inter- state in character. Disputes do arise amongst the basin states regarding utilization, distribution or control of water in these inter- state rivers.

To resolve these disputes, under the provisions of Interstate water dispute act 1956, state government may request the Government of India to refer the dispute to a tribunal for adjudication. So far in India, five tribunals have been setup to adjudicate water disputes namely: Godavari, Krishna, Narmada, Ravi and Beas and Cauvery water dispute tribunals. Inter-State Water Dispute Act, 1956

Inter-State River Water Disputes Act, 1956 lies in line with the Government of India Act, 1935. The act had been passed in accordance to Article 262 of the Constitution. However, according to the Indian Constitution, all the decisions regarding water tribunals would be made by the State Government. Whether they should be dealt with by the states, the union or concurrently by both, water was placed on the state list.

The following act defines Water Dispute and also gives information regarding Water Dispute from States to Central Government. The act gives decision related to Water of Inter State Rivers. The act enables setting up of tribunals to settle disputes on Inter-State water or river when the Central government is of the view that the matter cannot be solved by negotiations. the act is such that the decisions given by the tribunals is final and binding. Therefore the jurisdiction of Supreme Court and other Courts is clearly barred in such matters. It is only the tribunal who has decision making role but implementation does not come under tribunal.

Tribunal not only has its role in giving decision on the matters but it also investigates the matters which are of public importance such as Water Pollution, Flood Control, etc.²¹

Inter State Water Disputes Act, 1956 was enforced by the Parliament so that the disputes regarding the usage of water and its distribution are resolved. The following act came into control through Article 262 of Constitution of India. The base of the act has been through Government of India, 1935. At the time of distribution of subjects, Water had been included in the State List. The following act takes into account the matters of Water disputes and then passes on the complaints from different states to Central Government. When the matters can't be solved by Negotiation by Central Government, then the act comes into function by setting up of Tribunals so that conflicts on Inter State Water Dispute can be solved. Sarkaria Commission on this matter has said that Tribunals shall be created within one year from the complaint and the decision shall be given within 5 years.

According to this act, Tribunal's decision shall be meant as final and it would be applicable in all courts including Supreme Court. Supreme Court does not have any jurisdiction in relation to these matters. The Tribunals play a vital role of investigation of the matters which is of public importance. Krishna Tribunal, Narmada Tribunal Cauvery Tribunal, etc are some of the tribunals which have been created by the Government. Section 3, of this Act talks that state requests center to establish tribunal if the dispute related to water has arisen. Section 4 of this act empowers center to establish a tribunal if the disputes cannot be settled by negotiation. Section 11 of this act barred Supreme Court from entering or exercising its jurisdiction over these matters

River Boards Act, 1956

In accordance to the power provided under Entry 56 of List I, River Boards Act, 1956 was passed by the Parliament. The function of board is to ensure proper and optimum utilization of Water resources of Inter State Rivers and also to monitor different schemes such as irrigation, water supply, hydroelectricity power generation. There are River Boards set up under separate legislation, but these were set up to implement a mutually agreed sharing agreement between

²¹Inter states water dispute act, 1956 <http://www.cwc.nic.in/main/downloads/1956.pdf>

States, e.g. Upper Yamuna River Board, Betwa River Board. River Boards cannot be set up to monitor the working and functioning of Tribunal awards.²²

The River Board Act came into existence with the orders of the President and it was passed under Entry 56 of List I through Parliament. The act was enforced so that there can be development in the matters of Inter State Rivers. The main work of the board is for the purpose of advices and suggestions.

There are problems with the functioning of Inter State Water Disputes Act, 1956 that States do not agree with the decision of the Tribunals.

For resolving the matters of Inter State Water Disputes, many laws have been enforced by the Parliament. Through Inter State Water Disputes Act, 1956, River Boards Act came into existence.

National Water Policy, 1987

It was formed under Ministry of Water Resource for development and planning of water and to ensure water's optimum utilization. Section 21 Water Policy deals with the distribution of water amongst the states. The function of board includes proper allocation of water resource, prevent any form of exploitation, establish a standardized national information system with a network of data banks and data bases and other such related functions. The board's main objective is development of Water Bodies by giving them the status of 'economic good'.²³

These boards were to have two functions:

- 1) They would help to bring about proper and optimum utilization of the water resources of inter-state rivers.
- 2) They would promote and operate schemes for irrigation, water supply, drainage, development of hydroelectric power and flood control. National Water Policy, 1987

²² Ministry of Water Resources, <http://wrmin.nic.in/forms/list.aspx?lid=439>

²³ Ministry of Water Resources, National Water Policy, 1987
<http://www.rainwaterharvesting.org/Downloads/nwp1987.pdf>

Inter State River Water Disputes Act gives Centre the power of when the tribunals shall be formed so as to firstly check that the States have given an attempt to solve the dispute by Negotiation. But here we feel that Centre shall not be given this power. Inter State Water Disputes are a major Political issue, so it would be more convincing if the power of forming the tribunals is given to Judiciary who would not be impartial than the Political parties which are formed by the Government in the Centre.

Adding a meaningful edge to the ongoing discourses on development and globalisation, Inter State Water Disputes is one of the larger issues of water conflicts in India. These disputes are a key issue towards development, issues that bear indelible marks of Law, Science and Imperialism. Inter State Disputes over River Waters was the first ever attempt to put water conflicts in a larger context of India's Federal Constitution and to critically examine the connection between the constitution and imperialism in post-independence era. Law and Science are theoretically reconfigured and pragmatically realigned with the development issues.

Present Scenario

Article 262 discusses the issue of Inter State Water Dispute. The main question which has been stood up is whether the following enforcements are able to resolve the Water Dispute going on. Success can be seen in Krishna, Godavari and Narmada disputes and even Awards were given by the tribunals for the resolution of the conflicts.

But in Cauvery Dispute case, first order was passes by the tribunal which led to creation of second dispute but still the solution of main issues in the dispute are still pending. After 12 years of the matter, there is still nosing of resolution of the matter by the tribunals.

The Sarkaria Commission had suggested and gave a plan that one year's time to the central government and 5 years' time to Tribunals to resolve the problem. The suggestions could not be enforced for several years because Tribunal was only able to give awards but it had no role in implementation. Certainly in 2002 amendments were passed to speed up the process.

CHAPTER:3

RECOMMENDATIONS

Indian Inter State River Water Dispute mechanisms have an uncertain meaning and are opaque. If the initial water rights are defined and if institutions implement cooperative agreements, then the water can be shared efficiently amongst the citizens. If there is delay in implementation of agreements of water, it could lead to inefficient, non-cooperative investments in dams, irrigation, etc. We can see there are some situations where cooperation is possible and some situations where allocation of rights is at stake and there arises situation of pure conflict.

In case of pure conflict, negotiations do not have any results or effect. In these kinds of situations arbitration and adjudication is more efficient. Usually in Indian cases situation is such that not only the process is slow but also the functioning of arbitration is poor. The no agreement formula has very adverse result. Its outcome results in inefficient level of investment, non- agreeing states, inefficient use of water, etc. This shows negative impact on the economic growth.

National water commission independent of daily political pressures, a federated structure incorporating river basin authorities and water user associations, and fixed time periods for negotiation and adjudication are the various methods to reduce Inter State River Water Dispute.

It comes under the power of the National Parliament to solve the disputes. There are some theories which were made up to suggest water sharing which are:

Community of Interest Theory: the following theory states that river water belongs to the whole community and it shall be shared equally so that everyone gets maximum benefit. The underlying premise is that a river is one unit and defies all boundaries.²⁴

²⁴River Water Disputes in India, erewise, http://www.erewise.com/current-affairs/river-water-disputes-in-india_art52d7d27e1a9f2.html#.WHe3dFN97IU

Doctrine rights of Riparian: The doctrine of riparian rights emphasises the recognition of equal rights to the use of water by all owners of land abutting a river, as long as there is no resulting interference with the rights of other riparian owners.²⁵

Doctrine of prior apportionment: The cardinal rule of the doctrine is, that priority of appropriation gives seniority of rights.²⁶

CONCLUSION:

Water is a valuable resource which needs to be conserved and shall be utilised judiciously. In order to prevent inter-state disputes, a good way could be to inter-link all rivers and create a national water grid. Future generations might face scarcity of fresh water as demand for this resource is increasing at a very higher rate and everyone has their own necessity. It can be said that if there is ever going to be war between states then the reason behind it would be Water. People have become conscious and various education schemes are also going on for the efficient utilization of Water. Our State Government as well as our Central Government are trying to resolve the matters of dispute with the usage of Constitutional Provisions and also rights of State Governments on utilization of water. With the amount of fresh water available in India, various remedial measures can be enforced and also amendments can be brought up in the Act so that there is decrease in Inter State River Water Dispute.

These rivers toil across the rocks. It's just like a mother who sacrifices for her children. It is our duty to protect our Holy Mother.

²⁵ River Water Disputes in India, erewise, http://www.erewise.com/current-affairs/river-water-disputes-in-india_art52d7d27e1a9f2.html#.WHe3dFN97IU

²⁶ River Water Disputes in India, erewise, http://www.erewise.com/current-affairs/river-water-disputes-in-india_art52d7d27e1a9f2.html#.WHe3dFN97IU