

# **RESOLVING INTER-STATE WATERS DISPUTE IN INDIA WITH PARTICULAR REFERENCE TO CAUVERY WATERS: AN ANALYSIS**

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## **ABSTRACT**

The political structure of India is federal in nature in which powers between Central and States are divided. India has unique geographical system. The southern part of India is called as peninsular and northern part of India has world's highest mountain ranges. India has few International Rivers and several inter-State rivers and river valleys. The framers of the Constitution visualized inter-State waters dispute may be arisen in future that is why the Constitutional mechanism for resolving inter-State rivers and river valleys has been provided under Art.262 of the Constitution. This article has empowered the Parliament to enact laws for resolving inter-State waters disputes and also prohibited the jurisdiction of Supreme Court of India and other Courts within the territory of India. The Inter-State Waters Dispute Act, 1956 and River Boards Act, 1956 were enacted by virtue of Art.262. The Inter-State Waters Disputes Act, 1956 has inter-State waters dispute mechanism under section 4. This research paper analysis the historical background, Constitutional aspects of resolving mechanism in general and Inter-State waters dispute resolving mechanism under Inter-State Water Disputes Act, 1956 and Cauvery Waters Dispute Tribunal (CWDT) Award and its binding in particular.

## INTRODUCTION

*Water is food and fire is the eater of the food. Fire is established in water and Water is established in fire.<sup>i</sup>*

Constitutional law is supreme law of the land. It recognized co-operative federal concept for dispute resolving mechanisms between different units of federation. The concept of co-operative federalism is helped to minimize the friction and promote co-operation among various units in federal government.<sup>ii</sup> In the federal form of policy the powers between union and various units of States have been demarcated for resolving their jurisdictional problems. Hence the various units of States are dependent on the Central Government to promote and maximize the public welfare of the people. The Constitution has provided various mechanisms for resolving disputes. These are full faith and credit, inter-state council, zonal councils and river waters disputes. A success of the federation depends on the working of various units without friction with the Central Government. Hence the framers of the Constitution have clearly provided above mechanisms for success of federal Government. This paper analyses constitutional aspects of Cauvery water dispute, historical background in general and Inter-State River waters dispute mechanism under Inter-State Waters Dispute Act, 1956 and Cauvery waters dispute tribunal verdict in particular.

## HISTORICAL BACKGROUND

The river Cauvery is the largest river in Southern India which rises near Mercara in the Coorg at elevation of 1,341m. (4400ft) above the sea-level towards the Western Ghat and takes an easterly course passing through States of Karnataka and Tamil Nadu and confluence into the Bay of Bengal. The river has many small tributaries. Mettur Reservoir constructed across the river Cauvery by the State of Tamil Nadu. The waters from Mettur Reservoir are passing into upper Anicut where river Cauvery divided into two branch (i.e) northern branch called as “Collidum” and southern branch retain name of Cauvery. The upper Anicut was constructed in the year 1886 to facilitate diversion of water into Cauvery delta. The Chola King Karikalan constructed Grand Anicut south of Srirangam Island. It mainly benefits the Cauvery delta farmers. The irrigation was introduced by the Chola Kingdom in Thanjavur District<sup>iii</sup>.

The total length of the river of Cauvery from its originating source to confluences into Bay of Bengal is 800km (496miles). The total catchment of the Cauvery is 81, 155 Sq.km of which the catchment of the river in Karnataka is about 34, 273 Sq.km; in Kerala is about 2,866 Sq.km and the remaining area of 44, 016 Sq.km in Tamil Nadu<sup>iv</sup>.

***A. Irrigation system in the Cauvery Basin:***

The irrigation system in Cauvery basin started centuries ago all along the river course. This system was favourable for raising irrigated crops, and developed irrigated area increased in downstream delta below the Grand Anicut. The Grand Anicut structure is considered to be nearly 2000-year-old and the irrigated agriculture in the delta must have practiced much earlier<sup>v</sup>. The Upper Anicut is considered to be the head of the delta as river Cauvery carries essentially the irrigation waters and Collidum branch carries the floods.

Prior to 1928, the first storage in the basin viz. Krishnasagar dam of Karnataka came into operation. The total area irrigated in the basin was 19.80lakh acres both major and minor irrigation system utilizing about 510TMC of water.

***B. The Agreements between State of Madras and Mysore of 1892 and 1924: -***

Then the government of Mysore and Madras entered agreement between them on 18<sup>th</sup> Feb. 1892<sup>vi</sup> and another agreement on 18<sup>th</sup> Feb. 1924<sup>vii</sup>. The agreement of 1892 has related to “rules defining the limits within which no new irrigation works are to be constructed by the Mysore state without previous reference to the Madras Government” across the following streams of schedule as mentioned 15 main rivers. In Para- III of 1892 agreement states that as follows: -

“III. When the Mysore Government desires to construct any "New Irrigation Reservoir" or any new anicut requiring the previous consent of the Madras Government under the last preceding rule, then full information regarding the proposed work shall be forwarded to the Madras Government and the consent of that Government shall be obtained previous to the actual commencement of work. The Madras Government shall be bound not to refuse such consent except for the protection of prescriptive right already acquired and actually existing, the existence, extent and nature of such right and the mode of exercising it being in every case determined in accordance with the law on the subject of prescriptive right to use of water and

in accordance with what is fair and reasonable under all the circumstances of each individual case<sup>viii</sup>.”

There is any difference of opinion arises above said rule, both governments should refer the matter to arbitrators appointed by them or of government of India<sup>ix</sup>. The Cauvery dispute has been arisen for the construction of the Kannambedi Reservoir. On 23.09.1911, the Joint Secretary to the Government of Madras wrote to the Resident is Mysore that the Government of Madras had no objection to construct a small reservoir limited to storage capacity of 11, 030 million cubic feet on the understanding that the irrigation under the reservoir is limited to 25,000 acres. The Government of Madras sought an undertaking from the Mysore Durban on the above terms. But the Mysore Government had decided to construct a big dam on rising the height of the dam to 124 feet. Hence, the Government of madras refused to allow further construction, the madras was referred to arbitration. On 12.05.1914, the Arbitrator Sir. H.D. Griffin delivered Award stated that the Government of Madras was entitled to 22, 750 cusecs for the requirements of their existing irrigation equivalent to a present gauge-reading of 6.5 feet at the Cauvery Dam. The award was challenged by Government of Madras to Government of India. The Government of India did not interfere decision delivered by the Arbitrator and stated that no point available for reviewing the award. But His Majesty, the Secretary of State for India did not approve the award for following reasons:

“The Secretary of State holds that the Government of Madras were within their rights in appealing to him, firstly because the procedure prescribed in rule IV of the agreement of 1892 was varied in the Arbitration Proceedings and, secondly, because, while the Agreement of 1892 was and is valid as between the Governments of Madras and Mysore, this does not relieve him of his general responsibility for intervening in any matter in which it seems to him that the public interest is threatened with injury, even if the possible injury would be consequent on action taken under an award given, or purporting to be given, under the rule IV<sup>x</sup>.”

Again, the Government of India had advised to State of Mysore to solve Cauvery river dispute amicable way with Government of Madras. Thereafter two States Chief Engineers meet was held. The new rules and regulation were framed and executed by the two States on 18<sup>th</sup> February, 1924<sup>xi</sup>. The agreement of 1924 mentioned in clause 10 (i), (ii) and (iii) are in respect of the construction as follows-

“Clause 10 (i), (ii) and (iii) are in respect of the construction and operation of the Krishnarajasagara reservoir. Clause 10 (ii) requires the Mysore Government to regulate the discharge through and from the said reservoir ‘strictly in accordance with the Rules of Regulation set forth in the Annexure I’ to the said Agreement. Clause 10 (iv), (v), (vi) and (vii) relate to the future extensions of the irrigation in Mysore and Madras as well as future constructions of reservoirs on the Cauvery and its tributaries mentioned in Schedule A of 1892 agreement and how those reservoirs shall be operated so as ‘not to make any material diminution in supplies connoted by the gauges accepted in the Rules of Regulation for the Krishnarajasagara forming Annexure I’ to the said agreement. The next important Clause is 10 (xi) provides for re-consideration of the limitations and arrangements embodied in Clauses (iv) to (viii) at the expiry of 50 years from the date of execution of the said agreement for purposes of further extension of irrigation and modification and additions as may be mutually agreed upon as a result of such re-consideration. Clause 10 (xiv) provided that should Madras Government construct irrigation works on Bhavani, Amaravathy or Noyyil rivers in Madras as new storage reservoirs in Madras, the Mysore Government shall be at liberty to construct, as an offset, a storage reservoir on one of the tributaries of the Cauvery in Mysore of a capacity not exceeding 60% of the new reservoir in Madras. Clause 10 (xv) provided for reference to arbitration, if any dispute between the Madras Government and the Mysore Government arose ‘touching the interpretation or operation or carrying out of this agreement’<sup>xii</sup>.

The core issue of the Cauvery water dispute is the agreement of 1924 inoperative after expiry of the period of 50 years. The State of Karnataka started giving their own interpretation in respect of the agreement of 1924. According to State of Karnataka, after the expiry of the period of 50 years from the date of execution, the agreement expired and none of the clauses are enforceable in respect of discharge of water from Krishnarajasagar dam and other reservoirs on the tributaries of Cauvery. But the stand of Tamil Nadu stating that the agreement of 1924 is permanent nature and reservoirs constructed on the tributaries of river Cauvery binding on State of Karnataka<sup>xiii</sup>. These are now legally solved dispute between State of Tamil Nadu and State of Karnataka.



## CONSTITUTIONAL ASPECTS OF RESOLVING INTER-STATE WATERS DISPUTES

The State of Tamil Nadu and Pondicherry are claiming prescriptive rights of Cauvery waters. The Indian constitution is federal one. The success of the federation depends on working of various units without friction on the Central government and its various units of States<sup>xiv</sup>. The constitution itself has dispute solving mechanism of inter-state waters disputes.

The constitution makers visualizing dispute relating to inter-States waters in future that's why they were included Art.262<sup>xv</sup> in the Constitution. Article 262 states that Parliament may by law provide for the adjudication of any dispute or complaint with respect to use, distribution or control of the waters of any inter-state river or river valley and also it enacts provisions barring the jurisdiction of the Supreme Court or other courts in respect of inter-state waters disputes.

Based on Art.262, the Parliament of India had enacted the Inter-State Water Disputes Act, 1956 and the River Boards Act, 1956. The inter-state water dispute Act, 1956 empowers the central government on complaint from any State regarding water dispute with another State<sup>xvi</sup>, to set up a tribunal for the adjudication of the disputes<sup>xvii</sup>. The River Boards Act, 1956 provides the regulation and development of inter-state rivers and river valleys. Article 262 explaining the need for an extra-judicial machinery to settle inter-state disputes relating to water-supplies, the Joint Parliamentary Committee Report Observed: -

“The effect of this in to give each province complete powers over water supplies maintain the province without any regard whatever to the interests of neighboring provinces, the Federal Court would indeed have jurisdiction to decide any dispute between two provinces in connection with water supplies, if legal rights interests are concerned; but the experience of most countries has shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for setting disputes between provinces or States where the interests of the public at large in the proper use of water-supplies are involved. It is unnecessary to emphasize the importance from the public point of view of the distribution of waters in India, upon which not only the prosperity, but the economic existence of large tracts depends”.<sup>xviii</sup>

The original jurisdiction of the Supreme Court provides for determination of disputes between States.<sup>xix</sup> The Inter-State Disputes Act, 1956 and the River Boards Act, 1956, is having weakness for solving disputes. It has referred disputes to tribunals decide the dispute by way of arbitration for resolving disputes. It also curtailed the Supreme Court power of judicial review and other Courts jurisdiction for resolving disputes. It was criticized and recommended for reforms in the matter by the Commission on Centre-State Relations. The Constitution of India provides for the preventive measure for inter-state disputes by investigation and recommendation by an administrative body. For this purpose, the president of India can establish an inter-state council<sup>xx</sup> for enquiring into and advising upon inter-state disputes, if at any time it appears to him that the public interests would be served by the establishment of such council. The advisory bodies may be established to advice on inter-state matters. It was established under statutory authority.

- (a) Zonal council have been established by the states Reorganization Art, 1956 to advice on matters States on common interest to each of the five zones into which the territory of India has been divided – Northern, Southern, Easter, Western and Central Zones.<sup>xxi</sup>

The constitution of India is having above stated provisions for resolving inter-state disputes.

## **DISPUTE RESOLVING MECHANISM UNDER THE INTER-STATE WATERS DISPUTE ACT 1956**

The Inter-State Water Dispute Act, 1956 has been enacted by Parliament under Art 262 of the Constitution<sup>xxii</sup>. It provides for adjudication of disputes relating to use, distribution or Control of waters of inter-State rivers and river valleys between the States. A dispute arises regarding to the use, distribution or control of waters of inter-State rivers, a State Government may request the Central Government under section 3<sup>xxiii</sup> of the Act to refer a dispute before the tribunal for adjudication.

The Central Government opinion that a dispute cannot be resolved by negotiation, it would constitute a tribunal for the purpose under section 4<sup>xxiv</sup> of Inter-State Waters Disputes Act. The tribunal consists of a Chairman and two other members nominated by the Chief Justice of India

from amongst those who are Judges of the Supreme Court or the High Courts. The tribunal may appoint two or more assessors to advise it. After hearing of the case, the tribunal submits its report to the Central Government for publication<sup>xxv</sup> of the order becomes binding on the parties concerned. The inter-State waters dispute matter shall not be heard by the Supreme Court or other Courts. This bared the Supreme Court and other Courts under section 11<sup>xxvi</sup> of the Act.

The Inter-State Water Dispute Act has a lacuna that it does not lay down Principles or guidelines to be followed by the tribunal. The reason to take out of Court Jurisdiction is to appoint tribunals solve dispute on rule of law based on analogy of private proprietary interest in Water involved interest of Public at large.<sup>xxvii</sup> The Supreme Court had passed a direction to the Central Government to constitute a tribunal under sec.4 of the Inter-State Water Disputes Act 1956 in T.N. Cauvery NVVNUP Sangam case.<sup>xxviii</sup> The tribunal has taken cognizance of the matter and the same was decided and the report was sent to the Central Government for publication of Gazette notification for frame a scheme whereby provision may be made for all matters necessary to give effect to the decision of a Tribunal.<sup>xxix</sup>

## **CAUVERY WATERS DISPUTES TRIBUNAL AND ITS BINDINGS**

The Supreme Court in *T.N. Cauvery NVVNUP Sangam v. Union of India*<sup>xxx</sup> directed to the Central Government to fulfill its statutory obligation under Sec. 4 of the Inter-State Water Dispute Act, 1956. The Supreme Court categorically held that “the provisions clearly indicate the amplitude of the scope of adjudication in as 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>xxxi</sup> Based on which the Cauvery Waters Disputes Tribunal constituted. It consists of a Chairman and two other members nominated by the Chief Justice of India from amongst those who are Judges of the Supreme Court or the High Courts. The Cauvery waters dispute was referred to tribunal for adjudication. The tribunal was passed an interim award as regards distribution of Cauvery waters between the concerned States. The award was not accepted by the state of Karnataka. The State of Karnataka enacted an ordinance for tending to give ineffective for award passed by CWD Tribunal. The purpose of the Act was to override the decision of the tribunal and its implementation. The state of Karnataka Act was referred by the President to Supreme Court under Art.143<sup>xxxii</sup> of the constitution. *In the*



*matter of Cauvery Waters Disputes case*<sup>xxxiii</sup> the Supreme Court held that the Act of Karnataka as unconstitutional and void.

The final order was passed by the Cauvery Water Dispute Tribunal (CWDT) on 5<sup>th</sup> Feb. 2007 has contained XXI Clauses. The CWDT submitted its reports and decision under section 5(2)<sup>xxxiv</sup> of Act to Central government for necessary action on the same day. The Supreme Court has directed the Central Government on 4<sup>th</sup> February 2013 to notify the final award of the CWDT dated 5<sup>th</sup> February 2007 and expressed its displeasure over the Centre Government not notifying the award as per the mandate of the Inter-State River Waters Disputes Act, 1956. Thereafter the same was notified by the Central Government on 19 Feb. 2013 under section 6 of the Act after lapse of six years period. The important clauses of the award follow: -

A. The Order of the CWDT shall supersede the agreement of 1892 and 1924 between the then Government of Mysore and Government of Madras.<sup>xxxv</sup>

B. The Agreements of the years 1892 and 1924 which were executed between the then Governments of Mysore and Madras cannot be held to be invalid, especially after lapse of about more than 110 and 80 years respectively.<sup>xxxvi</sup>

C. The riparian States have right of obtaining from Cauvery River waters as follows: -

- i) The State of Kerala - 30 TMC
- ii) The State of Karnataka - 270 TMC
- iii) The State of Tamil Nadu - 419 TMC
- iv) U.T. of Pondicherry - 7 TMC

Total- 726 TMC

In addition to the Tribunal has reserved some quantity of waters (i) For environment protection- 10 TMC, (ii) Inevitable escapes into sea-10 TMC.<sup>xxxvii</sup>

D. The Inter- State contact points are identified for monitoring waters deliveries.<sup>xxxviii</sup>

E. Tentative monthly deliveries during a normal year have fixed at the inter-State contact point identified as Billigundalu gauge.

Month TMC	Month TMC
June 10	December 8
July 34	January 3
August 50	February 2.5
September 40	March 2.5
October 22	April 2.5
November 15	May 2.5
Total	192 TMC

The above quantum of 192 TMC of water comprises of 182 TMC from the allocated share of Tamil Nadu and 10 TMC of water allocated for environmental purposes.<sup>xxxix</sup>

## **CONSTITUTION OF CAUVERY WATER MANAGEMENT AUTHORITY**

The disputes have submitted to the Cauvery Water Tribunal and it completed its investigation and submitted its report the Central government meanwhile the aggrieved States preferred a Special Leave Petition (SLP) and same has been converted into appeal by the Hon'ble Supreme Court. The Appeal has been disposed by the Apex Court on 16<sup>th</sup> February 2018 wherein court directed the central government to constitute a scheme to monitor the compliance of its judgment. Further the Court raised by 14.75 tmct as waters share of Karnataka is 270 tmct and reduces share of Cauvery waters of Tamil Nadu in corresponding raised level of Karnataka. Tamil Nadu has been allowed to extract of 10 tmct water from Cauvery basin for drinking water purpose.

By the order of the Apex Court, the Central government has formulated sharing schemes as per the Sec.6A of the Inter-state Water Disputes Act, 1962 such as Cauvery Water Management Authority and Cauvery Water Regulation Committee to give effect to the Cauvery Waters Tribunal decision as per modification of the Supreme Court judgment.

The award is binding between the States as per section 6A<sup>xl</sup> of the Act. The mandate of implementation scheme shall be prepared by the Central Government and binding between parties. It imposes certain obligations on the disputed States i.e. all the disputed States are

bound by the CWDT Award. If the State of Karnataka failed to obey the order or award, the Central Government has ample power to impose under Art.356<sup>xli</sup> by virtue of Art.365<sup>xlii</sup> of the Constitution.

## CONCLUSION

The long-standing dispute between the States of Tamil Nadu & Pondicherry and Karnataka for distribution of waters of the Cauvery River has resolved by the Cauvery Waters Dispute Tribunal on 05.02.2007. The mechanism was formulated by Art.262 of the Constitution. The final award of the Cauvery Waters Dispute Tribunal (CWDT) has notified in Gazetteer of India by the Central Government. The State of Tamil Nadu and Karnataka is bound to obey the Cauvery Waters Dispute Tribunal (CWDT) order. The tribunal has resolved long standing dispute pending more than 150 years. The Cauvery Waters Dispute Tribunal (CWDT) award is binding between the parties and also duty cast on the State of Karnataka to follow award passed by the Cauvery Waters Dispute Tribunal (CWDT). If the State of Karnataka is reluctant to follow the award, it would lead to destruction of Constitutional mechanism and federal structure of polity in India. The Government of India has ample power under Article 365 to impose Art.356 in the State of Karnataka if failed to follow the award.

## ENDNOTES

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<sup>i</sup> Taittiriya Upanishad 3.8

<sup>ii</sup> Jain, M.P., Indian Constitutional Law (Nagpur:Wadhwa&Co., 2007), p.706.

<sup>iii</sup> The Report of the Cauvery Waters Dispute Tribunal with the decision, 2007. Vol. I, (New Delhi: Government of India, 2007), p.27.

<sup>iv</sup> *ibid.* p.28

<sup>v</sup> *ibid.* p.35

<sup>vi</sup> The Report of the Cauvery Waters Dispute Tribunal with the decision, 2007. Vol. II, (New Delhi: Government of India, 2007), p.4.

<sup>vii</sup> *ibid.* p.35

<sup>viii</sup> Rule III of The agreement between Mysore Government and Madras Government, 1892.

<sup>ix</sup> Rule IV of The agreement between Mysore Government and Madras Government, 1892.

<sup>x</sup> The Report of the Cauvery Waters Dispute Tribunal with the decision, 2007. Vol. II, (New Delhi: Government of India, 2007), p.29.

<sup>xi</sup> The Report of the Cauvery Waters Dispute Tribunal with the decision, 2007. Vol. I, (New Delhi: Government of India, 2007), p.44.

<sup>xii</sup> Clause 10 of The agreement between Mysore Government and Madras Government, 1924.

<sup>xiii</sup> Ibid. p.46.

<sup>xiv</sup> *ibid.*

<sup>xv</sup> Art. 262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.- (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.

(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).

<sup>xvi</sup> Sec. 3 of the Inter-State Waters Dispute Act, 1956.

<sup>xvii</sup> Sec. 4 of the Inter-State Waters Dispute Act, 1956.

<sup>xviii</sup> Shukla. V.N., Constitution of India (Lucknow: Eastern Book Company, 2007), p.685.

<sup>xix</sup> Art. 131. Original jurisdiction of the Supreme Court.- Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

<sup>xx</sup> Art. 263. Provisions with respect to an inter-State Council.- If any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of- (a) inquiring into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, in shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

<sup>xxi</sup> Established under the States reorganization Act, 1956.

<sup>xxii</sup> *ibid.*

<sup>xxiii</sup> Sec.3- Complaints by State Governments as to Water Dispute:

If it appears to the Government of any State that a water disputes with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or of any of the inhabitants thereof, in the waters of an inter-State river or river valley have been, or are likely to be, affected prejudicially by--

(a) any executive action or legislation taken or passed, or proposed to be taken or passed, by the other State; or

(b) the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters; or

(c) the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters the State Government may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication.

<sup>xxiv</sup> Section 4 - Constitution of Tribunal

1 "(1) When any request under Section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute:

Provided that any dispute settled by a Tribunal before the commencement of the Inter-State Water Disputes (Amendment) Act, 2002 shall not be re-opened";)



2 [(2) The Tribunal shall consist of a Chairman and two other members nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court.]

3 ["(3) The Central Government may, in consultation with the Tribunal, appoint two or more persons as assessors to advise the Tribunal in the proceedings before it".]

<sup>xxv</sup> Section 6 - Publication of decision of Tribunal

1 (1) The Central Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be given effect to by them.

1 ["(2) the decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court."]

<sup>xxvi</sup> Sec.11 Bar of the 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.

<sup>xxvii</sup> Jain, M.P., Indian Constitutional Law (Nagpur: Wadhwa & Co., 2007), p.716.

<sup>xxviii</sup> AIR 1990 S.C.1316.

<sup>xxix</sup> Sec. 6A of the Inter State Waters Disputes Act, 1956.

<sup>xxx</sup> *ibid.*

<sup>xxxi</sup> AIR 1992 S.C. at 552.

<sup>xxxii</sup> 143. Power of President to consult Supreme Court.-

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to Article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

<sup>xxxiii</sup> AIR 1992 S.C.522.

<sup>xxxiv</sup> Sec. 5(2) of the Inter-State Water Dispute Act, 1956 as states that the Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it.

<sup>xxxv</sup> Clause II of the CWDT Award, 2007.

<sup>xxxvi</sup> Clause III of the CWDT Award, 2007.

<sup>xxxvii</sup> Clause V of the CWDT Award, 2007.

<sup>xxxviii</sup> Clause VIII of the CWDT Award, 2007.

<sup>xxxix</sup> Clause IX of the CWDT Award, 2007.

<sup>xl</sup> Sec. 6A. Power to make schemes to implement decision of Tribunal.--

Without prejudice to the provisions of Section 6, the Central Government may, by notification in the Official Gazette, frame a scheme or scheme whereby provision may be made for all matters necessary to give effect to the decision of a Tribunal.

<sup>xli</sup> The President may dissolve the State government for failure of the Constitutional machinery in a State.

<sup>xlii</sup> Effect of failure to comply with, or to give effect to, directions given by the Union. The Central government has ample power for implementing award under section 6A of the Act, it include directions issued by the Centre notification which binding between the disputed States.