



## The Big Picture - Single Tribunal for River Water Disputes

India has seen protracted river water sharing disputes in recent years. Depleting groundwater, drying rivers and increasing demand for water have led to long legal wrangles between warring states. Over the years, there have been several tribunals hearing disputes between states on river water sharing, but they have not been effective in resolving disputes in a time-bound manner. But very soon, India might have a **single national tribunal – the Inter-State River Water Disputes Tribunal** – to arbitrate inter-state water disputes. Its recommendations will be binding on the competing parties.

### Present Legislations

- There are two legislations which have been promulgated under the Constitution to deal with water related disputes.
- One is the **River Boards Act** and another is the **Interstate River Water Disputes Act, 1956** which came about after the reorganization of states in the year 1956.
- The first legislation is primarily meant to create a body which is meant to advise government on river basins, particularly when projects are set up.
- The second one is basically meant to address issues of interstate water disputes. This particular legislation is a consequence of **Article 262**.

### Views in the Constituent Assembly

- In the constituent assembly, when the discussion was mooted with respect to addressing these disputes, members did not have in mind a law which allows the central government to set up any kind of tribunal. In fact, **they wanted Presidential reference for these kind of issues** to avoid politicization of such issues or perhaps delay.
- However, subsequently, Dr. Ambedkar said that it is best that the assembly go with the Parliament which has the power to enact laws with respect to this and as a consequence of it, the original Article 242 A translated to Article 262 under which the present laws have been made.

### Problems in the Present Legislations

- Under the current legislation, each time a problem or a dispute with respect to sharing of water or any kind of issue with respect to river between two states arises, it translates into complaint for constitution of a tribunal. The **time taken to constitute tribunals** has been, in some cases, 6 years, 7 years, 10 years and up to 20 years.
- Also, there is a practice that once a dispute is resolved by the tribunal, it has to be notified by the government as part of the official gazette and then it attains the status of decree or an award by the Supreme Court. Therefore, **one does not have access to the Supreme Court over and above that**. But still there have been matters going to the Supreme Court citing violation of fundamental rights under Article 31 and Article 32.
- The inter-state water disputes have become one of the biggest challenges to the Indian Federalism. There has been so much infighting between the states and the tempers/ emotions run so high that it actually spills over from the borders of the states. The Cauvery Water Dispute is an example.
- There has been increasing **politicization** of the issue.
- There are arrangements regarding the implementation, in case of Narmada, there is a Narmada Control Authority and in the case of the Cauvery river, there is a Cauvery Water Management

Authority. The framework is there but the implementation certainly depends upon the cooperation of the states.

- **The states have come together voluntarily and got into agreements.** So far, India had nine water disputes, but there are a huge number of water cooperation agreements that are in place. The Central Water Commission has compiled more than 160 agreements between the states. There are certain factors that motivate the states to think about working together. The problem is that one does not know what precisely motivates states.

## Inter-State River Water Disputes (Amendment) Bill, 2019

- The Bill tries to reduce the time it takes to constitute a tribunal i.e. it creates a permanent infrastructure.
- Also, like most commercial disputes, a **pre-litigation dispute resolution process**, which is attempted for a period of 18 months with the central government playing the role of arbitrator is present. And if the issue is not resolved within that period, it gets referred to the tribunal as a dispute.
- The delay in the adjudication process is because of the appointment of the members i.e. judges of the Supreme Court and the High Court and the assessors. The Bill seeks to constitute a permanent tribunal, so there will be benches and **one bench would be able to look at more than one issue/dispute**. Hence, the process will be expedited.
- In the proposed Bill, some **timelines have also been fixed**.
  - The Dispute Resolution Committee (DRC) will take one year extendable by six months to one and a half years.
  - The main report will be prepared in two months, that means the entire deliberations and argumentation and all those will take two years extendable by one year, so a total of three years.
  - And the clarification that is required has to be decided within one year extendable by six months.

## Suggestions

- Having a permanent body or office and a running tribunal is certainly useful. In addition to that, the government needs to think about **speeding the process of implementation** and resolution once the matter is referred to the Tribunal.
- The possibility of litigation before the Supreme Court would still be there, therefore there is a need to inculcate a **culture of cooperation among the states**.
- The proposed tribunal **puts only an infrastructural mechanism** in place to deal with the legal issues arising out of this matter. These issues also have some kind of bearing on national integration. When the access to resources translates into an axe between two communities and is capable of propelling sentiments, there needs to be a bit more **attention at the most fundamental level** just opposed to infrastructural level.
- Inter-state river disputes, or in larger perspective, inter-territorial disputes need some supplementing responses such as:
  - There is a need to see what kind of gravitas one can attach to the Dispute Resolution Committee to enable certain level of possible resolution even before it is referred to the tribunal.
  - There needs to be robust models for implementing the awards given by the Tribunal.
- The kind of **data support** that the proposed tribunal is going to get to make an informed decision needs to be seen. A good and healthy data over period of years on rainfall, amount of water, the needs of a particular state will also help in preventing such disputes.
- The Competition Commission of India (CCI) has an **array of experts** related to market based or economics based issue. This tribunal too needs regular support of this kind.

## Way Forward

- The **cooperation** is the most important thing. First, the states should try to avoid the conflict. The

Centre can play a role here in establishing a mechanism, so that disputes are taken care of at the first instance itself.

- The planning of projects and planning of water resources should be based on basin level and for that **river basin organizations (RBOs)** are need of the hour.
  - The Jal Shakti Ministry is ready with the **River Basin Management Bill**. There is a proposal to replace the River Board Act with it.
  - The Bill envisages to bring all the party states of a basin at one table and that would be headed by the Chief Minister of one of the states on a rotational basis.
  - The RBOs will be having a technical secretariat with all the engineering and other environment experts in it. The central water service engineering officers will be playing an important role. This will help in avoiding the conflicts.
- There needs to be a **political leadership** as well as some kind of **fear** should be there. In the past, the contempt proceedings have been initiated against the chief secretary of the state but nothing really happens.
  - The formation of the River Basin Organization which has been proposed, definitely takes into account the political participation because these are supposed to be headed by the chief ministers of the concerned states by rotation and members will be from the Jal Shakti ministry and from the concerned states.
- There needs to be a **water policy tied with the farming policy** that provide solutions to the following questions
  - What are the disputes that India currently faces?
  - What is the policy relook that India needs when it comes to resolution of these disputes?
  - What kind of resolution mechanism is needed to minimize the role of politicians in aggravating such disputes?
  - Once there is a final adjudication, how an award will be implemented?
  - Is there a serious database support for regular review?
- The environment will pose a huge challenge in the coming years particularly with India's increasing water needs. **Policy level reforms** are required for the same, responding to it at the stage of crisis is not the best way to go about it.

*While there are suggestions for reconsidering and reviewing the structuring and functioning of the tribunals, there is also a need to look for an alternative mechanism, based on environmental thinking, to resolve such disputes effectively, amicably and sustainably.*