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## FEDERAL APPROACH IN RESOLVING CENTRE-STATE WATER DISPUTE IN INDIA

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### ABSTRACT

*According to eminent Greek philosopher Pindar, "Water is the best of all things". Throughout the history water has been considered a natural resource critical to human survival. India is one of the largest countries in the world with diversified and multifaceted cultural, geographical, economic and social dimensions. There are many rivers which flow across India in various States from Kashmir to Kanya Kumari. There is always a demand by various states for the equitable share in interstate river water in order to fulfill their various needs. Conflict between states over the equitable distribution of natural resources including river waters is an age-old phenomenon in human society and history. Water resource scarcities are not only likely to lead wars of new millennium but such a scenario can also have security implications which could translate into regional security problems. India also is not a stranger to these conflicts. India is a federal democracy. Interstate (River) Water Disputes (ISWDs) are a continuing challenge to federal water governance in India. The provisions of the Constitution relating to interstate water dispute give a good instance of co-operative federalism. In India water is primarily falls under State list, except in case of interstate rivers where the Central government can intervene. However, powers of the river board created under River Boards Act, 1956 only have advisory powers. There have been instances where States have refused to accept the decision of tribunals rendering the arbitration not binding, which makes the Indian water dispute settlement mechanisms further ambiguous and opaque. The recent reforms proposed by the government are based on sound principles and may be effective in the immediate term. But in the long-term, several practical reasons necessitate the revisiting of interstate water governance in conjunction with focus on the Centre-State relations. At this juncture, this paper focuses on various constitutional and legal provisions devised to resolve inter-state water disputes and their short comings and presents some recommendations, including the setting up of*

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*an independent federated institution to adjudicate and negotiate between the parties  
to the dispute within a fixed time period.*

**Keywords:** Water disputes, Tribunals, Constitution of India, Adjudication

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## INTRODUCTION

India has 25 major river basins, with most rivers flowing across states. As river basins are shared resources, a coordinated approach between the states, with adequate involvement of the Centre, is necessary for the preservation, equitable distribution and sustainable utilisation of river water. Within India's federal political structure, inter-state disputes require the involvement of the Union government for a federal solution at two levels: between the states involved, and between the Centre and the states<sup>1</sup>.

However, interstate rivers in India have become sites of contestations, fuelled by conflicting perceptions of property rights, flawed economic instruments for food security, the lack of an integrated ecosystems approach and the prevalence of reductionist hydrology for water resource development. Such conflicts over the possession and control of river water have persisted since the inception of the Indian republic, with prolonged delays in resolution due to historical, institutional and political factors. In recent years, increasing water scarcity, a rapid rise in urban and rural demands for freshwater and contentious political dynamics have further exacerbated the problem.

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<sup>1</sup>Sayanangshu Modak Ambar Kumar Ghosh and J.M Mauskar, Federalism and Interstate River Water Governance in India, <https://www.orfonline.org> (published on Jan 04<sup>th</sup> 2021). accessed on 23/05/2024



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This paper provides an understanding of the existing challenges and gaps in the institutional and political fabric of interstate river water governance within the Indian federal system. It offers recommendations for improving the institutional and political ecosystem for resolving interstate river disputes in the context of the proposed River Basin Management Bill, 2018.

## **WATER IN THE CONSTITUTION OF INDIA**

Water is a state subject as per entry 17 of the State List and thus states are empowered to enact legislation on water. Entry 17 of State List deals with water i.e. water supply, irrigation, canal, drainage, embankments, water storage and water power. Entry 56 of Union List empowers the Union Government for the regulation and development of inter-state rivers and river valleys to the extent declared by Parliament to be expedient in the public interest<sup>2</sup>.

According to Article 262, in case of disputes relating to waters:

- 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.
- 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 mentioned above.

### **Parliament has enacted two laws according to Article 262:**

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<sup>2</sup>Constitution of India Act , 1950, a 246



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## **1) River Board Act, 1956**

The purpose of this Act was to enable the Union Government to create Boards for Interstate Rivers and river valleys in consultation with State Governments. The objective of Boards is to advise on the inter-state basin to prepare development schemes and to prevent the emergence of conflicts. However, till date, no river board as per the above Act has been created.

## **2) Inter-State Water Dispute Act, 1956**

Provisions of the Act say that, in case, if a particular state or states approach to Union Government for the constitution of the tribunal:

- Central Government should try to resolve the matter by consultation among the aggrieved states. In case, if it does not work, then it may constitute the tribunal. Supreme Court shall not question the Award or formula given by tribunal but it can question the working of the tribunal.

## **The Composition of the River Water Tribunal**

- Tribunal is constituted by the Chief Justice of India and it consists of the sitting judge of the Supreme Court and the other two judges who can be from the Supreme Court or High Court.

## **THE PRESENT MECHANISM TO RESOLVE THE INTER-STATE RIVER WATER DISPUTES IN INDIA**



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- The resolution of water dispute is governed by the Inter-State Water Disputes Act, 1956.
- According to its provisions, if a State Government makes a request regarding any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, then a Water Disputes Tribunal is constituted for the adjudication of the water dispute.
- The Act was amended in 2002, to include the major recommendations of the Sarkaria Commission<sup>3</sup>.
- The amendments mandated a one-year time frame to setup the water disputes tribunal and also a 3-year time frame to give a decision.

## **WATER AND INDIAN FEDERALISM**

State governments dominate the allocation of river waters. Since rivers cross state boundaries, disputes are inevitable. 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. However, states have sometimes refused to accept the decisions of tribunals. Therefore, arbitration is not binding. Significantly, the courts have also been ignored on occasion. Finally, the center has sometimes intervened directly as well, but in the most intractable cases, such as the sharing of the Ravi-Beas waters among Haryana, Jammu and Kashmir, Rajasthan, and Punjab, central intervention, too, has been unsuccessful<sup>4</sup>.

An unambiguous institutional mechanism for settling inter-state water disputes does not exist. On the other hand, water disputes are sometimes settled. Economic analysis is necessary to illuminate whether and how water disputes get resolved in India. The issue of inter-state water

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<sup>3</sup>1983

<sup>4</sup>Alan Richard & Nirvikar Singh Inter State Water Disputes in India: Institutions and Policies, (published Jan 2004) <https://www.researchgate.net> accessed on 23/05/2024



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allocation, while it involves special legal and technical features, has been clouded by some of the general problems of Indian federalism. We consider these issues here, but also will suggest that the subject is specific enough for more effective institutions to be developed, without getting bogged down in the more general difficulties. Of course, inter-state river water disputes in India have long been recognized as an important federal issue. The Sarkaria Commission on center-state relations<sup>5</sup> devoted an entire chapter to the problem and made a series of recommendations. India has been characterized as having a "quasi-federal" structure, because of the large degree of central discretion and control permitted by the constitution. The main illustrations of this are the power of the central government over state governments through dismissals and the appointment of politically motivated state governors and the central government's greater command over resources, relative to expenditures<sup>6</sup>.

While the former problem may be inherent, to some extent, in a parliamentary system with a strong executive-style parliamentary leader, fiscal federalism in India has been enhanced by a particular institutional structure, namely, the central Finance Commission. This body has provided a rule-bound or formulaic mechanism for sharing of revenues between the center and the states. Even though it has only advisory status and has also been subject to political influence, it has established precedents and conducted itself relatively independently of everyday political considerations. To the extent that the center is bound by such rules, such an institution reduces the control of the center over the states. From a federal perspective, a key feature of India's Constitution is the existence of separate lists demarcating central<sup>7</sup> and state responsibilities. This demarcation creates a broad framework of assignment of expenditure

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<sup>5</sup>Government of India, 1988

<sup>6</sup>resulting in a "vertical fiscal imbalance"

<sup>7</sup>Union List



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responsibilities, an essential feature of a federalist system. With respect to water, it has been extensively pointed out that water is in the State List of the Constitution<sup>8</sup>, but that the entry there is qualified, "subject to the provisions of Entry 56 of List I"<sup>9</sup>.

Essentially, Indian federalism, while marked by a relatively powerful center, has consistently involved coalition building to create such a center. This has meant a high level of explicit or implicit "horse-trading" among the center and states that are potentially key elements of a central coalition. One possible interpretation, therefore, is that the center wishes to preserve a system which allows it flexibility or discretion in bargaining over center-state issues in general, with water being one of them. A related feature of Indian political economy is the problem of multiple vetoes<sup>10</sup> which would help explain why, with discretion preserved, it may not be used decisively. This, too, seems relevant to the case of water, where negotiations have dragged on, and where the central government has sometimes prolonged them, by failing to speedily appoint a tribunal, even when asked. In the context of the above analysis, we next discuss the institutions that have, in fact, been created since 1980<sup>11</sup>.

The central ministry of irrigation published a document that year, outlining a proposed study of India's national water resources<sup>12</sup>. This led to the formation of the National Water Development Agency (NWDA) in July 1982, to "carry out the water balance and other studies...for optimum utilization of water resources..." (National Water Development Agency, 1992). This agency is a Government of India Society in the Ministry of Water Resources, and not

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<sup>8</sup>Entry 17

<sup>9</sup>Supra note 2

<sup>10</sup>Bardhan, 1984

<sup>11</sup>Supra Note 4

<sup>12</sup>Government of India, Ministry of Irrigation, 1980



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a body with any statutory backing. Furthermore, its scope is technical, and separate from the institutional realities of water allocation<sup>13</sup>.

In 1983, the National Water Resources Council (NWRC) was created by a central government resolution. Its composition includes chief ministers of states, lieutenant governors of union territories, several central government ministers, and the prime minister as chairman. This group met first in October 1985, and adopted a National Water Policy in 1987. This policy emphasizes an integrated and environmentally sound basis for developing national water resources, but provides no specific recommendations for institutions to achieve this. Though the council was created out of disenchantment with the adjudicatory process for inter-state river disputes, it has not provided concrete proposals to improve that process, nor has it provided the useful alternative that was hoped for, as the persistence of the Ravi-Beas and Cauvery disputes indicates<sup>14</sup>.

Our discussion and analysis above indicate that this should not be a surprise. The NWRC<sup>15</sup> does not meet any of the required criteria. It does not provide specific mechanisms for dispute resolution, it does not delegate sideways to achieve commitment possibilities, and it does not have any statutory force. While it may provide a useful talking shop for long range planning and information exchange, its usefulness otherwise has been limited. We finally turn to the issue of enforcement of tribunal awards. This issue was given some attention by the Sarkaria Commission. It noted that section 6 of the ISWD Act of 1956<sup>16</sup> provides that the Union

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<sup>13</sup>Supra Note 4

<sup>14</sup>Supra Note 4

<sup>15</sup>National Water Resource Council

<sup>16</sup>Inter State Water Disputes Act, 1956



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Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect by them<sup>17</sup>.

The commission's report goes on to suggest that the center cannot enforce the tribunal award if a state government refuses to implement the award. It notes that the amendment of the Act in 1980, inserting section 6A, which provides for an agency to implement a tribunal award, is not sufficient because such an agency cannot function without the cooperation of the states concerned. The Sarkaria Commission's recommendation is, therefore, that a water tribunal's award should have the same force and sanction behind it as an order or decree of the Supreme Court. We recommend that the Act should be suitably amended for this purpose<sup>18</sup>. This has not been done, but it should be noted that water tribunals already have such court equivalent powers for a narrow range of issues, including gathering of information, requiring witnesses to testify, and recovering the costs of the tribunal<sup>19</sup>. Furthermore, the ISWD Act<sup>20</sup>, Section 11 states that 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>21</sup>.

One possible interpretation of this provision is that it does implicitly give water tribunals broadly an equivalent status to the Supreme Court and their decisions must have the same force. Hence the center can theoretically deal with a recalcitrant state by dismissing the state government. However, this penalty, the only one seemingly available, is so great that it is hard to imagine its being used solely for a water dispute, although it has been used extensively under other pretexts. Once again, the resolution of water disputes is complicated by being tangled in

<sup>17</sup>Government of India, 1988, Chapter 17.4.18, p. 491

<sup>18</sup>Ibid

<sup>19</sup>Section 9 of the ISWD Act, reproduced in Ramana, 1992, p. 60

<sup>20</sup>Supra Note 14

<sup>21</sup>Ramana, 1992, p. 90



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the general difficulties of center-state federal issues. Thus, the recommendation to amend the act might not get to the crux of the problem<sup>22</sup>.

The Sarkaria Commission's other recommendations were based on the same kinds of difficulties in resolving past disputes. Two recommendations related to placing time limits on constituting tribunals and having them deliver decisions. These merely echoed the recommendations of the Administrative Reforms Commission<sup>23</sup> nearly 20 years before. Another recommendation was that the center could appoint a tribunal without being asked to do so by a state government. A final recommendation was for the establishment of a national level data bank and information system. None of these recommendations has been carried out. However, we would like to suggest that this failure partly reflects the fundamental nature of the problem, that water issues are tangled with broader difficulties in the federal structure. The solution, while including all the above recommendations, must include the creation of a quasi-independent hierarchy of institutions to manage the allocation of water. This will insulate the process from political uncertainties and permit a greater degree of commitment and cooperation. The central point to be emphasized is that appropriate institutions can play a vital role in shaping and constraining the incentives of the actors in inter-state water allocation<sup>24</sup>.

## INTERSTATE RIVER WATER AND CONFLICTUAL FEDERALISM

The governance of interstate rivers is mired in conflict for two constitutional reasons at the core of *hostile hydro-politics* at the subnational level: *conflictual federalism*, and the ambiguity around dispute resolution. Conflictual federalism results when the division of

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<sup>22</sup>Supra note 21

<sup>23</sup>1969, Chapter V

<sup>24</sup>Ibid



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legislative powers concerning water resources is amorphous due to inadequate enforcement of the constitutional role originally envisioned for the Union government. The vacuum thus created has allowed states unregulated access to the waters of interstate rivers, often based on historical arrangements, rooted in conflicting perceptions of property rights over trans boundary rivers or a reductionist view of food security. The lack of an integrated ecosystems approach that considers the nexus of land, water and food production is a serious omission in the efforts towards resolving conflicts over interstate rivers<sup>25</sup>.

The traditional justification for keeping interstate rivers under the Centre's purview is that since these rivers are not confined by any boundaries<sup>26</sup>, no state can claim an exclusive right to utilise their waters by depriving another state located downstream. Interestingly, however, while the Union List mentions "interstate water," the State List simply uses the term "water" to signify what is essentially "surface water" confined within the boundaries of the state. This has allowed states to legislate on the entire extent of surface water available within its borders, regardless of whether the source of the river or its tributary is located outside its boundary or the river is draining into another state. In this regard, a state only exercises its right to *use* water for various purposes as long as the Union government deems fit. In the event of indiscriminate use of interstate waters by a state, the Centre can enact a law to prohibit the state in the larger public interest. According to Iyer, the role of the Union government with regard to interstate rivers is crucial and is reinforced by Entry 20<sup>27</sup> of the Concurrent List. This provision requires states to obtain environmental clearances from the Centre in projects involving major and medium irrigation, hydropower etc., for their inclusion in the national

<sup>25</sup>Sayanangshu Modak & Ambar Kumar Ghosh, *Federalism and Interstate River Water Governance in India*, (published on 4<sup>th</sup> January 2024) <https://www.orfonline.org> accessed on 23/04/2024

<sup>26</sup>political or administrative

<sup>27</sup>economic and social planning



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plan. Thus, even without formal legislation, the Union government has the power to exercise significant control<sup>28</sup>.

However, the Union government has been reluctant to perform this role, leading to the indiscriminate and unregulated use of interstate river water. The Sarkaria Commission has noted that to move towards such legislation, the Parliament must comply with the precedent condition of declaring the extent to which its involvement is justified. Moreover, the State List's inclusion of interstate rivers within its scope creates operational ambiguity, limiting the Union Parliament's scope of enforcement. Consequently, it has relied on the exigent formula of *dispute resolution*, instead of a proactive basin-wide authority. Sreenivas Chokkakula cites two Acts as examples: the Interstate (River) Water Disputes Act, 1956 and the River Boards Act, 1956. The former has been invoked and amended several times, signifying its legal efficacy, while the latter remains untouched despite its importance in interstate cooperation. The river boards created so far, such as the Upper Yamuna River Board and the Brahmaputra Board, have been done through alternative and ad-hoc channels<sup>29</sup>.

Ghosh and Modak identify "conflictual federalism" by analysing two separate forms of disputes over transboundary waters: the subnational dispute over the Kaveri and the transnational dispute over the Teesta. The conflict over the sharing of the waters of Kaveri stems from divergent delineations of property or user rights by the co-riparian states, Karnataka (upstream) and Tamil Nadu (downstream). Historically, Tamil Nadu has used the bulk of Kaveri's waters to irrigate the paddy fields in its delta. It claims that the prescriptive rights of the downstream users in the state must be protected, an extreme principle of property rights

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<sup>28</sup>Supra Note 24

<sup>29</sup>Supra Note 27



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known as the “Doctrine of History.” Karnataka argues that delayed development of irrigation in Tamil Nadu should not be a reason for Karnataka to forego its rightful claim over the Kaveri’s waters, more so when there is a clear inadequacy of water in the upstream for economic development<sup>30</sup>.

## **FROM CONFLICT TO COOPERATION**

The current condition of interstate river water governance in India warrants a new approach for cooperative federalism and interstate water governance. In terms of identifying a unit of governance, river basins are the most appropriate. Located at the confluence of hydrology, geography and ecology, river basins are frequently used as a proxy for ecosystem boundaries and are a superior categorisation than the gerrymandered, mutable boundaries marked by humans on maps. Therefore, river basins have been declared essentially depoliticised spaces, citing scientific legitimacy and drawing ‘nature’ into the equation to simply override any other consideration. Wester & Warner note that depoliticisation becomes an attractive option for those who seek to neutralise all opposition or persuasive alternatives. Potter notes that the scientific discourse, being largely objective, does not entail any subjectivity, uncertainty and agency. On the other hand, politicisation is essentially conflictual, messy and entails a drawn-out process<sup>31</sup>.

However, the premise that a natural boundary is beyond scrutiny or guarded against any difference of opinion is questionable. River basins are open systems and are essentially connected to the sea and the atmosphere. Their boundaries often do not conform with the boundaries of an underlying aquifer; the water within the river courses are connected to the

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<sup>30</sup>Ibid

<sup>31</sup>Supra Note 4



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underlying aquifer system, and groundwater may contribute to stream flow (and vice versa) based on the movement of the water table. Moreover, the use of water may transcend the boundaries of river basins due to inter-basin water transfer. Virtual water exports in a water-scarce economy may exacerbate water stress in the basin, due to factors operating outside the hydrological boundary. The natural delineation, too, can be ambiguous, depending on the physical characteristics of the land, making any political boundary based on watershed a problematic proposition. Ecologically, the continuity of landscapes transcends boundaries of river basins, and natural resources such as wildlife and forests are essentially trans boundary<sup>32</sup>.

Thus, a river basin is as much a political unit as it is a natural unit, and the space for politics is essential for effective governance. Institutions for governance, even those at the watershed level, must consider the complexity and diversity in governing arrangements that may result due to non-confirmation to hydrological boundaries. However, the Constituent Assembly Debates reveal that the issue of ISWD<sup>33</sup> occupied limited space in the priority pyramid of the Constitution makers, limiting the scope for debate and discussion on the topic. With national unity being the foremost concern of the Assembly, especially in the backdrop of the violence of Partition, river-water sharing amongst the states appeared to be a relatively less contentious issue at the time<sup>34</sup>.

A pressing concern with regard to ISWDs in India is the reductionist and fragmented approach to water governance. As previously discussed, the Centre has willingly or circumstantially withheld itself from its constitutional mandate of laying out a structure for the governance of interstate rivers. Consequently, the divergent perspectives of property and user

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<sup>32</sup>Ibid

<sup>33</sup>ISWD - Inter State Water Dispute

<sup>34</sup>Supra Note 4



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rights of states have created a fragmented model of water governance. In recent years, there has been a global shift towards an Integrated River Basin Governance, with the adoption of a holistic approach. This new paradigm of water governance takes into consideration various aspects of water use, e.g. treating water as an integral component of the global geo-hydrological cycle, essential for the long-term sustenance of ecosystem services. It effectively critiques the commonly held view that water is an economic resource that can be stocked for human use and proposes that an ever-increasing supply of water is not a prerequisite for ensuring food security. Thus, *demand management of water* is a key feature of this new paradigm. In this context, Bandyopadhyay proposes a synergy-based approach called “Integrated Water Systems Governance” (ISWG), which calls for the internalisation of four important constituents of flow in rivers whose dynamic interactivity creates equilibrium: Water, Energy, Biodiversity, and Sediments (WEBS)<sup>35</sup>.

In a shift to *proactiveness*, the Union government proposed the River Basin Management Bill, 2018. The Bill is not only a step towards breaking free from constitutional deadlock and reliance on an exigency-driven contingent response (i.e. conflict resolution) but also an attempted shift towards Integrated River Basin Management. The Bill proposes to establish a River Basin Authority (RBA), for the “regulation and development of interstate rivers and river basins.” It uses various normative principles such as participation, cooperation, and sustainable utilisation of resources; integrated management of water; demand management and conjunctive use of water for effective and efficient management of river basins<sup>36</sup>. However, it remains to be seen whether these principles will be reflected in the operations. Barham notes that when decision-making moves to the river-basin level, hard-won

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<sup>35</sup>Supra Note 34

<sup>36</sup>The Draft River Basin Management Bill, 2018



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democratic rights in conventional social and political domains must be assured in the domain. A move for centralisation, according to Barham, may lead to calls for abolishing, downsizing, or streamlining existing regulations of social systems of organisation to conform to the watershed standards. Moreover, while watershed-level rules may be desirable for holistic environmental planning, the established social and political institutions in place may fail to ensure that deliberations over these rules will be democratic.

The draft River Basin Management Bill, 2018 envisions a two-tier managerial system for enabling cooperation between states. The first tier will comprise of the Governing Council, representing political aspirations, and the second tier will be the Executive Board, which will be beset with the official work<sup>37</sup>. Additionally, an Advisory Council has also been proposed, albeit not mandatorily. The Executive Board is mandated to prepare a River Basin Master Plan for the interstate rivers, devise schemes, and monitor the progress of such schemes. The Governing Council is entrusted with the responsibility of approving the plan and making recommendations regarding conservation, regulation and development of water resources<sup>38</sup>.

## SUCCESS STORIES OF CO-OPERATIVE FEDERALISM

*Rivers are a shared heritage of our country....they should be the strings that unite us, not the strings that divide us,"* said Prime Minister Manmohan Singh.

Sarkaria Commission<sup>39</sup> and Punchhi Commissions<sup>40</sup> and the NCRWC have greatly insisted on practicing cooperative federalism. The early success of cooperative federalism in

<sup>37</sup> The Draft River Basin Management 2018

<sup>38</sup> Supra Note 4

<sup>39</sup> 1983

<sup>40</sup> A Commission on Centre-State relations, 2007



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DVC<sup>41</sup> had inspired Parliament to enact the River Boards Act, 1956. There are instances of long-term solutions in federal systems of the US and Australia by resorting to agreements and administrative arrangements for the implementation of agreements. In the International scenario, the big success in Danube River management is traceable to cooperative spirit. Cooperation involves giving up of partisan attitude and approaching the problem with actions for implementation of the Tribunal Award<sup>42</sup>.

The functioning of Narmada Controlling Authority (NCA), which was constituted for implementing the Narmada Water Dispute Tribunal's Award, exhibits great amount of success in ensuring timely release of water, acquisition of submerging land, rehabilitation of evictees and sharing of costs. Scrutiny of reports by the State parties and supervisors of the NCA. Representatives of States of MP, Gujarat, Maharashtra, Rajasthan and the Central Government are the members of the NCA. John Wood considers that this gives an example of successful resolution of lengthy and complicated dispute and triumph of reason and technology bringing better life to millions. Similar is the functioning of Krishna River Controlling Authority. The successful working of Bhakra Beas Management Board has motivated the Cauvery Tribunal to recommend for constituting Cauvery Management Board with the support of a committee called Cauvery Water Regulation Committee. It has proposed the details of its functioning. Their implementation requires mutual cooperation of States. The National Commission on Integrated Water Resources Development and the Second Administrative Reforms Commission have suggested for forming River Basin Organization for each river basin and their functioning in Co-ordination with panchayath institution. The success story of inter-state cooperation in combating

<sup>41</sup>Damodar Valley Corporation, 1948

<sup>42</sup>P Ishwar Bhat, Inter-State & International Water Disputes, (2013), I edition, Eastern Book Company, Lucknow



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water pollution and Central Government's encouraging role as reflected in Ganga Action Plan should inspire the polity to strengthen the approach of cooperation<sup>43</sup>.

## RECOMMENDATIONS

- Firstly, there is a need to set up a permanent tribunal for such disputes instead of creating one each time.  
Then it has been suggested by the NCRWC<sup>44</sup> that the Inter-State Water Disputes Act, 1956 be repealed and in its place a more comprehensive parliamentary legislation should be enacted. It is of the view that it is not necessary to exclude Inter-State Water Disputes from the original jurisdiction of the Supreme Court under Article 131 of the Constitution and that such disputes should also be made to fall within the exclusive jurisdiction of the Supreme Court. The rationale behind this is that almost in every case either of the party approaches Supreme Court seeking judicial review of the order or for the enforcement of the Fundamental rights. This leads to involvement of two forums in decision making.
- Also, parliament needs to exercise its powers under Entry 56 List I effectively. According to National Water Policy, this can be done by setting up of river boards<sup>45</sup>.
- Alternatively, it has been suggested by some scholars that the Supreme Court should only be granted appellate jurisdiction, if an appeal to the Supreme Court is possible, at least no state can reasonably nurse a sense of grievance and as the

<sup>43</sup>Supra Note 25

<sup>44</sup>NCRWC - The National Council for Review of Working of the Constitution

<sup>45</sup>Inter-state Water Disputes in India- UPSC(published on 14<sup>th</sup> December 2021)<https://lotusarise.com/inter-state-water-disputes-in-india-upsc>accessed on 23/04/2024



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Supreme Court's decisions are still being respected and obeyed in this country, the non-implementation problem will disappear<sup>46</sup>.

- Setting up of an Independent Federated Institution to adjudicate and negotiate between the parties to the dispute within a fixed time period.

## CONCLUSION

India has 2.4% of the World's land, 18% of the world population but only 4% of the renewable water resource. If sufficient steps are not taken, the uneven water distribution will increase the possibility of water conflicts. The Centre's proposal to set up a single, permanent tribunal to adjudicate on inter-state river water disputes could be a major step towards streamlining the dispute redressal mechanism<sup>47</sup>.

However, this alone will not be able to address the different kinds of problems legal, administrative, constitutional and political that plague the overall framework. Centre's proposal to set up an agency alongside the tribunal that will collect and process data on river waters can be a right step in this direction<sup>48</sup>. To strengthen the cooperative federalism, parochial mindset making regional issues superior to national issues should not be allowed. So, disputes must be resolved by dialogue and talks and the political opportunism must be avoided. A robust and transparent institutional framework with cooperative approach is need of the hour.<sup>49</sup>

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<sup>46</sup>Supra Note 25

<sup>47</sup>Lotus Arise, Inter-state Water Disputes in India- UPSC (published on 14<sup>th</sup> December 2021) <https://lotusarise.com/inter-state-water-disputes-in-india-upsc> accessed on 23/04/2024

<sup>48</sup>Ibid

<sup>49</sup>Supra note 48