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WATER TRIBUNAL

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ABSTRACT:

WATER TRIBUNAL:

An Essential Mechanism for Resolving Water Resource Dispute .Water is an important and main resource for the function of human beings and other living forms in the world. As water scarcity and competition for resources intensify, the need for effective mechanisms to manage and resolve water-related conflicts becomes increasingly important. This abstract explores the concept of a Water Tribunal as a dedicated institution designed to address disputes arising from water allocation, quality, and usage.

The Water Tribunal is envisioned as an impartial, specialized body responsible for adjudicating water-related disputes. It would consist of experts in water law, hydrology, environmental science, and conflict resolution. The tribunal's main objectives include ensuring equitable distribution of water resources, ensuring environmental sustainability, and promoting cooperative management of shared waters.

TRIBUNAL:

A tribunal, often established as a quasi-judicial institution, handles a range of issues, including administrative and tax-related disputes. Its functions encompass adjudicating disputes, determining rights among conflicting parties, making administrative decisions, and reviewing existing ones. The term "tribunal" originates from "tribunes," denoting magistrates of ancient Rome who safeguarded citizens from arbitrary judgments by noble judges. A tribunal, whether explicitly called so or not, represents an entity or individual vested with the authority to arbitrate, adjudicate, or settle claims and conflict ^[1]

NEED FOR TRIBUNAL:

- To overcome the situation arising due to pendency of cases in various courts, national tribunals and other tribunals under various laws (hereinafter referred to as “Tribunals”) have been established.
- The Tribunal was created to reduce the court's workload, speed decision-making, and provide a forum comprised of lawyers and experts in the fields that fall under the Tribunal's jurisdiction.
- The Tribunal plays an important and specialized role in the judicial system. They relieve pressure on already overloaded ships. Handles disputes related to environmental, military, tax, and administrative issues. ^[2]

CONSTITUTIONAL PROVISIONS:

The introduction of tribunals into the Indian Constitution was not part of its original framework. It was subsequently integrated through the 42nd Amendment Act of 1976, marking a significant development in India's legal and administrative landscape. This inclusion is primarily governed by two distinct articles: Article 323-A, which deals with Administrative Tribunals, and Article 323-B, which pertains to tribunals for various other matters.

Under Article 323-B, both the Parliament and state legislatures are granted the authority to establish tribunals tasked with adjudicating disputes across a spectrum of vital subjects. These matters encompass taxation, foreign exchange, import and export, industrial and labor issues, land reforms, urban property ceiling, parliamentary and state legislature elections, food-related concerns, rent, and tenancy rights.

A notable distinction between Articles 323-A and 323-B emerges in three key aspects. Firstly, Article 323-A primarily focuses on the establishment of tribunals for public service matters, while Article 323-B extends to tribunals for a broader range of subjects, as mentioned above. Secondly, while tribunals under Article 323-A can be instituted exclusively by the Parliament, those under Article 323-B may be established by both the Parliament and state legislatures, particularly for matters falling within their legislative purview. Additionally, Article 323-A specifies the formation of a single tribunal at the center and one for each state or multiple states, without delving into the question of hierarchy. In contrast, Article 323-B allows for the creation of a hierarchy of tribunals, thereby providing a more flexible framework.

Moreover, Article 262 of the Indian Constitution addresses the resolution of inter-state river disputes. This article outlines the role of the Central Government in mediating and settling disputes that may arise between state and local governments concerning the distribution and management of river resources.

In sum, the introduction of tribunals through the 42nd Amendment Act in 1976 has played a pivotal role in enhancing the legal infrastructure of India by providing a specialized mechanism for dispute resolution across a wide range of critical issues, and it has notably shaped the landscape of administrative justice in the country. ^[3]

WATER TRIBUNAL:

A water tribunal is a specialized judicial body created to address disputes and complexities surrounding water resources. These institutions play a pivotal role in resolving conflicts related to water allocation, use, and management, involving various stakeholders like governments, communities, and industries. The primary goal of water tribunals is to ensure equitable and sustainable access to this essential natural resource while promoting environmental preservation and societal well-being.

Key elements crucial to the functioning of water tribunals include:

1. **Legal Framework**: Establishing a well-defined legal framework that outlines the tribunal's jurisdiction, powers, and procedures.
2. **Equitable Distribution**: Ensuring the fair distribution of water resources among competing users, taking into account environmental considerations.
3. **Dispute Resolution**: Providing a platform for parties involved in water disputes to present their cases and reach mutually acceptable solutions.
4. **Scientific Expertise**: Leveraging scientific and technical expertise to evaluate environmental and hydrological aspects of water resource management.
5. **Mediation and Arbitration**: Using mediation and arbitration techniques to facilitate negotiation and agreement among conflicting parties.
6. **Transparency and Accountability**: Ensuring transparency in decision-making processes and holding the tribunal accountable for its actions.
7. **International Collaboration**: Promoting international cooperation and treaties to address transboundary water disputes.

Water tribunals represent a progressive approach to resolving water-related conflicts impartially, with a foundation in science and law. Their role in facilitating equitable and sustainable water management contributes to broader goals of water security and environmental protection. In a global context where water resources are facing increasing challenges, dedicated institutions like water tribunals are instrumental in shaping a more sustainable future.

India, with 18% of the world's population but only 4% of its renewable water resources, grapples with uneven water distribution, leading to disputes among states over the allocation of its seven major rivers. This underscores the pressing need for effective water governance and dispute resolution mechanisms, such as water tribunals, to address these concerns. ^[4]

WATER IN THE INDIAN CONSTITUTION:

In the Indian Constitution, water is addressed in a dual framework. It's included in the State List (item 17), allowing states to enact laws concerning rivers. Simultaneously, Article 56 of the Union List grants the Central Government authority to regulate and develop inter-state rivers and valleys. Article 262 empowers legislatures to decide on disputes concerning interstate river waters.

Under Article 262, the Indian Congress passed two key acts:

1. The River Boards Act of 1956, permitting the Government of India to establish Inter-State River and River Valley Boards in consultation with state governments. However, no such boards have been created as of now.
2. The Interstate Water Disputes Act of 1956, which stipulates that if a state or government approaches the Center to establish an arbitral tribunal, they must first attempt dispute resolution through consultation before forming the tribunal. This framework governs water-related matters in India, balancing state and central interests in water resource management.

RIVER WATER TRIBUNAL COMPOSITION:

The River Water Tribunal is composed of the Chief Justice of India, a sitting Supreme Court judge, and two judges from the Supreme Court or a High Court. In India, water dispute resolution follows the 1956 Inter-State Water Disputes Act, allowing state governments to seek a tribunal for resolution. The tribunal's decision is ultimate and binding.

INTER STATE WATER DISPUTES TRIBUNAL:

In India, the Inter-State Water Disputes Act of 1956 empowers state governments to seek a central tribunal for the resolution of water disputes. Notably, the decision of this tribunal holds ultimate authority.

RIVER WATER DISPUTES TRIBUNAL'S HISTORY:

The first interstate water tribunal, the Krishna Water Disputes Tribunal, was established in 1969 with the participation of Karnataka, Andhra Pradesh, and Maharashtra. In 1973, R.S. Bachawat delivered the judgment. However, a review was demanded by the involved states decades later, leading to the formation of the second Krishna Water Disputes Tribunal in 2004. The judgment was delivered in 2010, and it was reviewed at the request of Andhra Pradesh. Following the creation of Telangana, it became the fourth party to the conflict, and the case remains pending in the Supreme Court.

Delays in settling and enforcing decisions prompted amendments to the Interstate Water Disputes Act in 2002. These changes included ensuring that the tribunal is constituted within a year of the request, with a mandate to reach decisions within three years (or exceptionally, within five years). In cases where the decision is not immediately implemented, interested parties can seek clarification within three months. The tribunal's decision holds the same weight as a Supreme Court decision and is final, beyond the Supreme Court's jurisdiction. However, state governments retain the option to approach the Supreme Court through Article 136 (Special Leave Petition), or individuals can apply to the Supreme Court for a violation of Article 21 (Right to Life).

The Inter-State Water Disputes (Amendment) Bill of 2017 proposed the establishment of a single permanent tribunal to handle such disputes. The bill aimed to maintain a transparent national-level data collection system categorized by basin and create a data bank and information system under a single agency. Additionally, it planned to form a dispute mediation committee consisting of experts, tasked with resolving disputes within a year. Only if the commission failed to resolve the dispute would the matter be escalated to the tribunal. These measures were intended to expedite the resolution of interstate water disputes in India.

ACTIVE WATER DISPUTES TRIBUNALS IN INDIA:

- Krishna Water Disputes Tribunal II (2004) – Karnataka, Telangana, Andra Pradesh, Maharashtra
- Mahanadi Water Disputes Tribunal (2018) – Odisha & Chattisgarh
- Mahadayi Water Disputes Tribunal (2010) – Goa, Karnataka, Maharashtra
- Ravi & Beas Water Tribunal (1986) – Punjab, Haryana, Rajasthan
- Vansadhara Water Disputes Tribunal (2010) – Andra Pradesh & Odisha.^[5]

ISSUES WITH INTERSTATE WATER DISPUTES TRIBUNALS:

Water disputes in India are notorious for their protracted resolution times, causing substantial delays. For instance, the Godavari water dispute application was filed in 1962, but it took until 1980 for the tribunal's decision to be published in the Official Gazette. The Cauvery Water Disputes Tribunal, established in 1990, didn't reach a final decision until 2007. This snail-paced process is compounded by a lack of transparency in the institutional framework and procedural guidelines, resulting in challenges in execution.

Moreover, the composition of these tribunals lacks multidisciplinary representation, primarily comprising judicial representatives. This narrow focus inhibits a comprehensive understanding of the intricate technical and ecological aspects of water disputes.

Another critical issue is the absence of authoritative, universally accepted water resource data, which is essential for establishing a baseline for adjudication. Without this common foundation, disputes become more complex.

The shift in the tribunal's approach from deliberative to adversarial has further fueled litigation over water division and politicized disputes. As water becomes intertwined with politics, debates often devolve into issues of vote-bank politics. This politicization has led to increased resistance by states, higher litigation rates, and weakened dispute resolution mechanisms. For instance, the Punjab government excluded the case in the Ravi Beas court.

Additionally, the water dispute resolution process contains various ambiguities and complexities, partly due to the involvement of multiple government and departmental stakeholders. India's

intricate federal structure and colonial legacy also contribute to the challenges, leaving ample room for discretion at various stages.

In conclusion, India's water dispute resolution process is mired in a web of delays, opacity, and inefficiencies. To expedite the resolution of these crucial disputes, it is imperative to address these issues by promoting transparency, multidisciplinary expertise, and the availability of comprehensive data while mitigating the influence of politics on water matters. ^[6]

CAUVERY WATER DISPUTE:

The Cauvery River, an intrinsic part of Karnataka, flows through Tamil Nadu and Pondicherry, ultimately reaching the Bay of Bengal. The livelihoods and food production in both states significantly rely on the waters of the Cauvery. However, this shared resource has been a source of contentious disputes for years. Tamil Nadu contends that it requires the river's mercy, especially during dry years, while Karnataka struggles to provide water to its own farmers.

Historically, an agreement was in place between the Madras Presidency and the Principality of Mysore until it lapsed in 1974. Multiple efforts were made to resolve the dispute through trilateral meetings between the ministers of Karnataka and Tamil Nadu, along with Union Ministers for Irrigation, from 1968 to 1990. These discussions failed to yield a mutually agreeable solution. Even the Indian government's mediation between 1972 and 1976 couldn't bring about an accord.

Tamil Nadu's plea led to the establishment of the Cauvery Water Dispute Tribunal by the central government in June 1990. In 1991, the tribunal issued an interim order instructing Karnataka to release one tmcft (thousand million cubic feet) of water to Tamil Nadu. Dissatisfied with this temporary measure, Karnataka escalated the matter to the Supreme Court.

In a landmark case known as *Re Cauvery Water Disputes Tribunal v. Respondent*, the Supreme Court declared Karnataka's order to be ultra vires, or beyond its legal authority. This decision sparked protests in Karnataka, leading to unfortunate fatalities. In response, the central government formed a monitoring committee under the Cauvery River Authority (CRA) and the Interstate River Water Disputes (ISRWD) Act in 1998. This agency directed Karnataka to release 9,000 cusecs of water to Tamil Nadu. However, Karnataka refused to comply, exacerbating the dispute.

In 2007, the Cauvery Water Disputes Tribunal issued its final award, validating the two agreements between Madras and Mysore on water supply to Tamil Nadu from 1892 to 1924. Tamil Nadu had two primary demands. First, it sought the publication of the final award in the Official Gazette, and second, it pushed for the establishment of a Cauvery Management Board. The latter demand was eventually fulfilled in 2013.

The situation reached its zenith in September 2016 when the Supreme Court directed the Karnataka government to release 15,000 cusecs of water to Tamil Nadu within ten days. Karnataka adhered to court orders, but the decision led to violent protests in the state, resulting in one fatality and injuries. Tamil-owned businesses were targeted by angry mobs, causing turmoil and a blockade of the Bengaluru-Mysore highway.

Simultaneously, in response to the Attorney General's request, the Supreme Court commissioned a technical team to assess the ground reality in the Cauvery Basin. The team reported its findings in October 2016 and directed the Karnataka government to release 2,000 cusecs of water. Hearings on the matter are ongoing.

The Cauvery conflict has strained relations between Tamil Nadu and Karnataka. The violence and disorder accompanying the dispute have exacerbated the situation. The central government has played a mediating role, establishing an arbitration panel and forming the technical team based on its recommendations. Furthermore, the Cauvery River Authority (CRA) monitored the actions of the Prime Minister. Thus, the central government has played the role of a negotiator in this contentious interstate water dispute.^[7]

SUGGESTIONS:

Digital Case Management: Implement a digital case management system to streamline the documentation and retrieval of case-related information. This can significantly reduce paperwork and administrative delays.

Specialized Training: Provide specialized training for tribunal staff and judges to enhance their understanding of water-related issues, allowing for more informed and efficient decisions.

Alternative Dispute Resolution (ADR): Encourage the use of ADR methods, such as mediation or

arbitration, to resolve cases more quickly and cost-effectively, while reducing the burden on the tribunal's docket.

Clear and Predictable Procedures: Ensure that the rules and procedures for filing cases, presenting evidence, and making appeals are clear and well-defined. Predictable processes reduce uncertainty and delays.

Qualified and Sufficient Personnel: Ensure that the tribunal has a sufficient number of qualified judges and support staff to handle its caseload effectively.

Case Prioritization: Establish a system for prioritizing cases, giving preference to urgent matters or those with significant environmental or public health implications.

Stakeholder Engagement: Involve relevant stakeholders, such as local communities, environmental organizations, and government agencies, in the decision-making process to ensure a more comprehensive view of the issues.

Expert Consultation: When necessary, engage independent experts to provide technical input and advice to the tribunal, especially in complex or highly technical cases.

Efficient Hearing Procedures: Streamline the hearing process, avoiding unnecessary delays and ensuring that hearings are conducted in an organized and timely manner.

Public Awareness and Education: Promote public awareness and education about the tribunal's role, processes, and available resources to encourage responsible and informed use of the tribunal's services.

Performance Metrics: Establish and regularly review key performance indicators to monitor and improve the tribunal's efficiency, such as case resolution times and user satisfaction.

Regular Review and Adaptation: Continuously evaluate and adapt tribunal procedures and rules to address changing circumstances and emerging water-related issues.

Implementing these suggestions can help enhance the efficiency of a Water Tribunal, ensuring that it fulfills its role in resolving water-related disputes effectively and fairly.

CONCLUSION:

The proposal to establish a single, permanent tribunal for interstate river water disputes is a positive move in streamlining the resolution process. However, it alone cannot address the multifaceted issues - legal, administrative, constitutional, and political - that affect the overall framework. The idea of creating an agency to collect and process river water data is a step in the right direction. To uphold cooperative federalism, it's crucial to prevent a parochial mindset that prioritizes regional over national issues. Resolving disputes through dialogue and avoiding political opportunism is essential. What's needed is a robust and transparent institutional framework with a cooperative approach to effectively manage and resolve these complex water-related issues.

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