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ANALYSIS OF INTER-STATE RIVER WATER DISPUTES IN INDIA AND ITS MAJOR CAUSES

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ABSTRACT:

Inter-State river water disputes are persistent and complex issue in India. Recently in December 2022 Supreme Court of India gives 3 months deadline to the Central Government for constitution of Pennaiyar River Water Dispute Tribunal to resolve dispute between Tamil Nadu and Karnataka for the distribution of water of Pennaiyar River but this deadline has also been elapsed and no decision was taken in this respect. Besides it India has a long history of various inter-State river water disputes since Independence which could never been resolved completely till today. These inter-states dispute not only resulted into bloodshed many times but also a threat for federal structure of India. So this article provides a comprehensive analysis of Inter-state river water disputes in India, exploring their historical context, legal frameworks and investigates the reasons responsible for giving birth to this problem continuously.

keywords: inter-state water dispute, water wars, article 262 of Constitution of India, right to water.

“Anyone who can solve the problems of water will be worthy of two Nobel prizes – one for peace and one for science.” – John F. Kennedy, 35th President of U.S.A.ⁱ

***INTRODUCTION-**

River water is an important component for human development from the beginning of various civilizations till today. Human utilizes water for various purposes such as consumption, agricultural and irrigation, hydropower projects, industrial use and transportation etc. Rivers are one of the main sources of water criss-cross the frontiers of number of nations and states without considering their size, nature and ideology. With over half of the world’s population living in 250 river basins shared

by several nations. So the flow of rivers has been diverted by the human beings time to time against nature to fulfil their certain confined interest and thus human uses its potential as a weapon.

***MEANING OF INTER-STATE RIVER WATER DISPUTES-**

Through the ancient time, human nature is always experimental with his life as well as water utilisation for different purposes. One of the purposes that sustained till today is use of water for agricultural purposes as per different geographical conditions. This experimental nature of human with nature's gift for their own purposes has not only worked in its favour but also against him. Water came to be seen as a weapon for those who seek to stalk the natural resources without realising the reality of getting its reduction quantitatively as well as qualitatively. Consequently, conflicts have emerged among various groups for more utilisation of water. These conflicts are called as Water Wars.ⁱⁱ And when these water wars arises among various nations or various states of a county then it is called interstate river water disputes.

Thus water Dispute is a term describing a conflict between countries, states and group over the right to access water resources.ⁱⁱⁱ The United Nation also recognises that water dispute arises from opposing public and private interests of individuals and groups. Thus, a diverse variety of water conflicts have arisen throughout history and a contributing factor in disputes are territorial disputes, a struggle for resources, and strategic advantage etc.

***RIVERS: NATIONAL ASSET FOR INDIA-**

The Supreme Court in many judgements held that the right to life provided under article 21 of Constitution also includes rights to clean water. Apart from it the court has also defined water as a 'national asset' in various verdicts. The following are important verdicts given by the courts –

In 1990, the Kerala High Court held that government should not extract groundwater which adversely affects the sources in future as it is also deemed as violation of the Article 21. The right to life is much more than animal existence. Apart from expanding the context of the right to life, the court directed the state government to cleaning up of water resources including rivers even tanks and wells.

In *M.C. Mehta v. Union of India*^{iv}, and *Hinch Lal Tiwari v. Kamala Devi*^v the court applied the 'precautionary principle' to prevent the pollution of drinking water resources. Various judicial pronouncements have recognized that water is a community resource which should be held by the state as a public trust in such manner so that the maximum number of population can be served.

In 2002, the Supreme Court upheld the validity of Sardar Sarovar dam project on Narmada and declares water is the basic need for the human survival and also part of right to life as provide under Article 21 of the Constitution and that can only be served by providing water in remote areas.^{vi}

With a view to conserve the river Ganga and Yamuna, the Uttarakhand High Court in *Mohd. Salim v. State of Uttarakhand & Others*^{vii} in its March 20, 2017 judgement attributes the status of legal persons to both rivers. After this judgement Madhya Pradesh government also declared river 'Narmada' as a living person in the same year.

In *State of Karnataka by Its Chief Secretary Vs State of Tamil Nadu By Chief Secretary*^{viii} the Hon'ble Supreme Court declared Cauvery River as a national Asset and also held that exclusive right on river water cannot be claimed by any state. The water of river should be utilized for the welfare of human being with equitable proportion. Chief Justice Deepak Mishra wrote in its judgement [while it is common and equal to all through whose land at river runs and no one can of tract or diverted yet as one of the beneficial gift of nature each beneficiary has a right to just and reasonable use of it]^{ix}

***RAIN FALL IN INDIA AND ITS IMPACT OVER INDIAN RIVER SYSTEM-**

As India is a very large country, it shows large climate variation. Some areas receive excessive rainfall, while some suffers from lack of rain. That is why the former generally get flooded, while the latter suffers from drought. However, on the basis of rain fall, Indian rivers are being divided into two categories:

- (a) Rivers of North India
- (b) Rivers of Central and South India

Most of the rivers of North India such as Indus, Ganga and Brahmaputra have their source in the glaciers of Himalayas so these rivers have a continuous water flow throughout the year, although the amount of water flow changes with the change of season. The rivers of Central and South India are mainly dependent on the monsoon rainfall for the water flow. As India is an agriculture based economy, thus the rivers of North India are more suitable for irrigational purposes. As a result of this the river water disputes mainly arises in the Central and Southern India. There is an attempt to construct the dam on South and Central Indian rivers for irrigational purposes so that the water for agricultural and industrial purposes can be reserved.

***EMERGENCE OF VARIOUS INTER-STATE RIVER WATER DISPUTE IN INDIA-**

India is blessed with many rivers as there are 20 major Inter-State River Basins. Most of the rivers in India have inter-State character as they pass through two or more States. Sharing of water among these riparian States has always been an issue of conflict. Inter-state river water disputes are on the increase on account of increase in water demands in various Sectors.

Narmada River Water Dispute was one of the major water disputes in India. The main issue in the dispute was the allocation of water from the Narmada River among the states of Madhya Pradesh, Gujarat, Maharashtra, and Rajasthan. Each state has its own water requirements for agriculture, industry, and domestic use, leading to disagreements and conflicts over the distribution of water resources. For its resolution central government constituted Narmada River Water Dispute Tribunal in 1968 which took approx. ten years to give its recommendation but still some issues cannot be resolved completely till today.

Krishna River is the second largest river in the India. After coming into force of the Constitution of India, the entire Krishna basin fell within the territory of States of Bombay, Mysore, Hyderabad and Madras. Thereafter by the States Reorganisation Act, 1956 the new states of Maharashtra, Karnataka and Andhra Pradesh comes into existence and these states also became the parties to the dispute. The Krishna Tribunal was constituted in April 1969 which took five years to forward its report to Government of India.

The Godavari basin comprises in the States of Maharashtra, Andhra Pradesh, Madhya Pradesh, Orissa and Karnataka. The conflict arose between the states for equitable apportion of water share. Afterward The Andhra Pradesh Act, 1953, divides the state into Andhra Pradesh and Orissa. The States Reorganisation Act, 1956 divides the Bombay into Maharashtra and Gujarat. Then the States of Maharashtra, Andhra Pradesh, Madhya Pradesh, and Orissa also join the dispute over sharing of waters of the Godavari basin. The Godavari Water Disputes Tribunal was constituted in April 1969 and took eleven year long time to give its final recommendation.

Ravi and Beas belong to the Indus river system which comprised in the State of Punjab before 1966. After coming in to force of Punjab Reorganisation Act, 1966 the state of Punjab divided into two separate states namely Haryana a non-riparian state in one hand and Punjab a riparian state on the other hand. The State of Haryana claimed 4.8 MAF water out of 7.2 MAF but Punjab denied claim of Haryana and asserted that it was not a riparian State. But as per Section 78 of the Punjab Reorganisation Act, 1966, the Union Government, allocated equal amount of water to both states and 0.2 MAF water is reserved for Delhi. The Sutlej Yamuna Link (SYL) was also proposed by central government so that Haryana can fully utilise its allocated water share. But till today this project cannot be completed as Punjab shows its disinterest in SYL project. This dispute cannot be resolved after multiple negotiation session so Central Government constituted Ravi-Bias River Water Dispute Tribunal in 1986 but till now this issue cannot be resolved.

***CONSTITUTIONAL PROVISIONS DEALING WITH INTER-STATE RIVER WATER DISPUTES -**

Article 246 of the Constitution provides ambit under which the Parliament of India and Legislatures of the States is entitled to make laws. The responsibility between the Centre and the States in respects of making laws is divided in three categories –

- 1) The Union List (List – I)
- 2) The State List (List –II)
- 3) The Concurrent List (List –III)

As per the Entry 56 of List –I, parliament has the legislative power to regulate and develop the interstate rivers and valleys for the purpose of public interest and according to Entry 17 of List –II, the legislature of states are empowered to make the laws and policies for the water supplies, irrigation and canals, drainage and embankments, water storage for citizens residing in such state. But such power is subject to Entry 56 of List-I.

One of the most prominent problems in Indian Federalism is the Inter-State River Water Disputes. In severe situations, the interrelationship of various Indian states is threatened by these disputes and the Constitution framers were well aware that water disputes would occur in the future. Thus Article 262 was incorporated in the constitution. Article 262(1) empowers the parliament to make laws for the adjudication of disputes in respect of any inter-state river. Whereas Article 262(2) empowers the parliament to make such laws which bars the jurisdiction of any court including High Court of Supreme Court in respect of matters related to inter-state river water disputes.

***ENACTMENT RELATING TO INTER-STATE RIVER WATER DISPUTES-**

In exercise of the power conferred by article 262 of the Constitution, Parliament enacted two legislations to resolve the dispute relating to inter-state water rights. These were:-

1) The Inter-State River Water Disputes Act, 1956 (ISWD)-

This Act passed under Article 262 of the Indian Constitution, empowers central government to Adjudicate disputes relating to inter State river water between two or more states. The provisions contained in ISWD Act, 1956 are as follow:-

Section 2(c) defines the term “Water Dispute” according to this only such disputes and differences between two or more states with respect to utilisation of water of inter-state river or dispute arise by any agreement between disputed states comes with in the purview of water dispute under section 2(c). Whenever any dispute arises, Section 3 provides the provision to file a complaint by the aggrieved state government against another state. And such state may also request for constitution of the Water Dispute Tribunal to the Central Government.

After receiving complaint, if central government finds that dispute cannot be settled by alternate methods such as negotiation then it shall constitute Water Disputes Tribunal under Section 4 of the said Act. The Tribunal is required to investigate the matter referred to it and then forwarding its report to the Central Government. As per Section 6 of the Act the Central Government is under obligation to publish the decision of the Tribunal in the Official Gazette and as decision is published it becomes final and binding on the parties to the dispute and has to be given effect by them. By the 2002 Amendment section 6A was added which empowers Central Government to frame a scheme to give effect to the decision of a Tribunal.

Section 11 of the said act puts bars the jurisdiction of the Supreme Court or any other Court in respect of any water dispute which may be referred to a Tribunal under this Act.

2) **The River Boards Act, 1956-**

Under the said legislation, the State Governments at their discretion may demand the creation of Inter State River Boards from the central government to assist in developing inter-state rivers and adjudicate issues arising out of them, and help in preparing schemes for regulation of waterways, include the control, conservation and optimum use of water resources, in preparation of promotional schemes for irrigation, drainage, hydro-electric power, pollution and water supply etc. Moreover, the Statue divides whole river basin into sub-basins, and each party is entitled to exercise their right over respective sub-division lying in their particular area. Further, in order to ensure water allocation in the sub- division the principle of 'Equal Apportionment' is followed on which the proportionate share of the parties are based upon factors such as investment, area of the basin and total volume of water.

***ROOT AND CAUSES OF INTER-STATE RIVER WATER DISPUTE IN INDIA-**

Although the constitution of India provides a well-established mechanism for the resolution of Inter-state water disputes but after analysing various sources of law including statutory provisions, Judicial decisions and inter-State agreements the major reason behind inter-state water disputes is that in India, there are no universal legal principles applicable which determine the equitable share of water of a

state whether it is riparian or non-riparian. Apart from this, there is no law which provides an order of priority for different uses of water.

It is clear that the formation of new states is the main factor which gives birth to the water conflicts among the states. The new states are being formed on the basis of their political, linguist and cultural situations where as during such creation the geographical situations never have been taken into account and completely neglected. The division of a state converts a riparian state into two parts; Riparian state in one hand and into a non-riparian state in another hand, where the riparian state denies in providing the water to new formed non riparian state. The issue involved between Punjab and Haryana is the best example of Inter-state water dispute produced by state recognition. However in 2014, the formation of new state of Telangana separated from Andhra Pradesh has given birth to another Inter-state Water Dispute generated by State recognition.

The term “water dispute” defined under sub-section (c) of section 2 of the ISRWD Act, 1956 has become outdated. This definition was relevant in 1956 but in present time the water disputes has included many other aspects such as hydro-electricity. Which is neither the use nor the distribution of water but it is a product of water. The division of electricity produced by Tihiri Dam located on the Ganga is the major issue between the state of Uttrakhand and Uttar Pradesh since the recognition of Uttrakhand state.

The most prominent problem faced by interstate water dispute is that it does not have an effective authority for the implementation of the order of the tribunal. The tribunal can only give an award but cannot ensure its implementation. The central government works as enforcing authority. And tribunal does not have any power to punishment for contempt. The award of the tribunal although supposed final and binding but can be challenged in court through review petition. The judicial process is essentially a long process which causes the delay in adjudicating the dispute example Cauvery water dispute.

*CONCLUSION-

After completing the study it is concluded that there is two causes of Inter-State River Water Dispute. One is the formation of new states without considering its geographical condition and as it results into lack of water for the agriculture to a new formed state and another is no proper principles which govern the sharing of water between two or more states. So to overcome these disputes the new holistic and scientific approach such as river linking projects, use of grey water for agriculture, introducing new agriculture technologies, constitute Inter-State Council under Article 263 of Indian constitution must be adopt. Formation of Single river water dispute tribunal on place of various separate river water dispute tribunals for different river water disputes can also be as a solution so that the delay in adjudicating the matter can be reduced and this federal problem could be resolved effectively.

ⁱ <https://www.azquotes.com/quote/539193?ref=water-resources>, last accessed on 18th June, 2023

ⁱⁱ Asha Krishna Kumar, Water Wars: The Problem of Scarcity and Sharing, Frontline Publication, 9th February,1996, p.114

ⁱⁱⁱ The coming wars for Water, Report Syndication, Published on 12th Oct 2019

^{iv} (1998) 5 SCC 611

^v 2001 (3) A.W.C. 2398 (S.C.)

^{vi} Narmada Bachao Andolan v. Union of India and Others, Writ Petition (C) No. 319 of 1994.

^{vii} Writ Petition (PIL) No.126 of 2014

^{viii} Civil Appeal No. 2453 of 2007

^{ix} <https://www.thehindu.com/news/national/cauvery-a-national-asset-no-exclusiveownership/article22778384.ece>, last accessed on 19th June, 2023