

Major River disputes of Karnataka

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Abstract

Interstate water disputes in India often prolong over long periods and tend to recur. The Cauvery dispute tribunal was constituted in 1990 and the final award was given in 2007, after 17 years. The 2nd Krishna water dispute tribunal, constituted in 2004, gave its final award recently in December 2010. These long delays are partly due to elaborate judicial proceedings and deliberations. But more importantly, the adjudication proceedings are often circumvented and impeded by variety of political interests. The aleatory nature of politics reshapes the nature and extent of a dispute and contributes to its frequent recurrence. Discourses of policy and governance reforms usually do not account for this contingent nature of politics. The frequent recurrence and long deliberations produce various kinds of insecurities and impact people's livelihoods.

Further, interstate water disputes raise deeper and morbid concerns in the light of the prophecies about future wars over water resources. Indeed, the interstate water disputes in India have been on rise in recent years. Besides the concluded five tribunals, the Government of India is in the process of setting up two additional tribunals: one over Mahadayi river dispute between Goa and Maharashtra; and the other over Vansadhara between Orissa and Andhra Pradesh. Two other disputes are under consideration - the Mullaperiyar (between Kerala and Tamil Nadu)¹ and the Bhabli (between Maharashtra and Andhra Pradesh). These disputes caused concerns about their potential impact over State-State relations in India, with greater implications to the federal integrity of the nation-state. These concerns are not without reason; the recently concluded Cauvery dispute between Tamil Nadu and Karnataka led to civic strife, ethnic clashes and violence in 2002 and later.

Another case in point is the recent Telangana separatist movement. Though not an interstate water dispute, regional imbalances in sharing of water resources was one of the core issues at the heart of the movement. Political mobilization over uneven water resource distribution is proving to be a major challenge for policy makers in India. Such political movements do have implications for the state in India and its federal structural relations.

Keywords: Karnataka, Mahadayi river, krishna, water dispute, cauvery

Introduction

Popular perceptions and debates in India often point to the constitutional division of legislative powers between the States and the Center as one of the reasons for interstate water disputes; the other is, poor implementation of awards. Article 246's Seventh Schedule of the Constitution includes three lists of subject matters: Union List, Concurrent List and State List. The Parliament has exclusive powers to make laws about subject matters in the Union List and the States have powers with respect to the matters in the State List. The Concurrent List includes subject matters where Union (Center) can also make laws besides States. Water is in the State List as the Entry 17: "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I." This listing of water in the State List has given predominant role to the States in managing water resources. It is argued that lack of uniform policy and synergy between the States lead to

emergence and recurrence of interstate water disputes. This led to the belief that shifting water to the Union List would provide greater role to the Center, which in turn could bring the necessary synergy. These arguments however appear ill-informed.

The Entry 17 of the State List is subjective to the Entry 56 of the Union List, which states: "Regulation and development of interState rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest." In an extensive critique of this view, Iyer (1994a, 1994b, 2002) argues that the Center has never exercised its powers under the Entry 56 and always allowed States to take the larger responsibility. This willful abdication by the Center led to an understanding that the States have exclusive power to manage water resources. The Entry 56's emphasis on public interest extends the scope of Center's involvement to matters where one State's actions affect another State in a harmful manner.

This applies even when a river flows entirely within a State's boundary, but with impacts in other States. Iyer (2002) insists that there are other possible ways of extending Center's control over the use of water resources. For e.g., the provisions of the Entry 20 in the Concurrent List about economic and social planning requires the States to take clearance from the Center for any project of water resource development - including the projects for irrigation, hydropower, flood control etc. Further, there are several other Acts that requires clearances from the Center to satisfy other considerations. For instance, Forest Conservation Act and Environment Protection Act require clearances for their respective considerations. These various provisions allow the Center to be responsible for water resource development and also provide powers to regulate and control them.

Center has not fully exploited these provisions so far (Ibid.). The point here is: listing of water under State List cannot be a reason for emergence of interstate water disputes. It is the application (or lack) of available Constitutional provisions that is contributing to disputes.

Objective:

This paper seeks to study major water sharing dispute of Karnataka and explore the center's role in handling the discords

Scale vs equity:

a contentious question in interstate water disputes The knowledge about international water conflicts, though comprehensive, is a work in progress. The rules and principles have been criticized for lack of sufficient consideration for issues like exclusion of key stakeholders other than states, effective enforcement mechanisms for implementation of agreements.

These are vital, particularly for interstate water disputes. Incorporating stakeholder groups other than States in tribunal's adjudication process is a key discussion point. This becomes pertinent considering the regional imbalances, sub-regional identities and fractured political constituencies in India. The imbalances and fractured identities are increasingly becoming active forces of political polarization and contestation in interstate water disputes (see Simhadri 1997, Khan 1973). Though participation in formal adjudication processes in India is restricted to States involved, other stakeholders found ways to actively engage in interstate disputes, by invoking right based Constitutional provisions.

The limited experiments of alternative approaches also argue for active participation of stakeholders as in Cauvery family initiative and other propositions for 'track two' dialogues (Janakarajan 2006, Iyer 2003a). This complicates the idea of equitable

apportionment and poses the fundamental question of, at what scale equity questions need to be pursued. This is a potent space for increasing political participation and contestations.

(De)politicizing disputes and democratic design

There is an undeniable gap in the understanding the design, context and motives of Constitutional provisions and associated legal instruments for interstate dispute resolution. The Entry 56, the Article 262 and corresponding RBA and ISDA need to be situated in their historical and evolutionary context to arrive at a better understanding of their application and utility. The history of unification process, conception of Indian state and evolution of its federal design - are some vital considerations that do not find place in the debates. D'Souza's (2009) claim that keeping water as a State subject was a pragmatic necessity in the unification process, though lacks evidence, is persuasive and worthy of reflection. Exclusion of interstate water disputes from the original jurisdiction of Supreme Court may have been driven by such considerations.

The spirit, intent and context of the Constitutional provisions and legal instruments need to be rationalized and reconciled with changing political context of federal relations such as coalitional politics, competitive nature of the States and a shift in nature of Indian state from Strong Center- Weak States to Weak Center-Strong States. This proposition to situate policies, legislations and governance in historical context marks an important shift in approaching interstate water disputes.

This also helps us to distinguish two distinct streams of research about interstate water disputes: one, the dominant legalist approach that tends to depoliticize disputes; and the second, the emerging stream seeking to situate law and democracy in the historical context of Indian state's evolution. This paper's insistence to focus on politics analysis intends to bridge the two streams for the benefits it offers. First and obvious is to recognize and consider history and politics in shaping the very design of legal instruments and policies. Second, it forces the policy debates to acknowledge how political dynamics influence outcomes. Third, it begs to consider the impact of these politics over the state and federal democracy in India.

Krishna-Godavari Water Dispute

The Krishna-Godavari water dispute among Maharashtra, Karnataka, Andhra Pradesh (AP), Madhya Pradesh (MP), and Orissa could not be resolved in spite of negotiations and discussions. Here Karnataka and Andhra Pradesh are the lower riparian states on the river Krishna and Maharashtra is the upper riparian state. The dispute was mainly about the interstate utilization of untapped surplus water. Background of the dispute In the early 1950s, the Indian government adopted the First Five Year Plan, which outlined a path for economic development.

The Krishna is an east-flowing river that originates at Mahabaleshwar in Maharashtra and merges with the Bay of Bengal, flowing through Maharashtra, Karnataka, Telangana and Andhra Pradesh. Together with its tributaries, it forms a vast basin that covers 33% of the total area of the four states. A dispute over the sharing of Krishna waters has been ongoing for many decades, beginning with the erstwhile Hyderabad and Mysore states, and later continuing between successors Maharashtra, Karnataka and Andhra Pradesh. In 1969, the Krishna Water Disputes Tribunal (KWDT) was set up under the Inter-State River Water Dispute Act, 1956, and presented its report in 1973.

The report, which was published in 1976, divided the 2060 TMC (thousand million cubic feet) of Krishna water at 75 per cent dependability into three parts: 560 TMC for Maharashtra, 700 TMC for Karnataka and 800 TMC for Andhra Pradesh. At the same

time, it was stipulated that the KWDT order may be reviewed or revised by a competent authority or tribunal any time after May 31, 2000. Afterward, as new grievances arose between the states, the second KWDT was instituted in 2004. It delivered its report in 2010, which made allocations of the Krishna water at 65 per cent dependability and for surplus flows as follows: 81 TMC for Maharashtra, 177 TMC for Karnataka, and 190 TMC for Andhra Pradesh.

The Planning Commission wanted to include some major schemes for irrigation and hydroelectric power on the rivers Krishna and Godavari. The commission asked the states of Bombay, Hyderabad, Madras and Mysore to suggest certain viable projects. An inter-state conference was convened in 1951 to discuss the utilization of water in the Krishna and Godavari and to assess the merits of the various projects suggested. The agreement provided for a review of allocations after 25 years. Karnataka, (then Mysore) did not ratify the agreement relating to the Krishna waters. In 1953, the states began to be reorganized on a linguistic basis. Andhra Pradesh came into existence in 1953, while in 1956 there was a further redrawing of state boundaries. Hence the 1951 agreement needed to be revised. Prolonged negotiations did not lead to a new agreement, and separate tribunals were constituted for the Krishna and the Godavari in 1969, but with the same membership.

Mahadayi river dispute

The dispute over Mahadayi river began in the 80s and grew stronger in the subsequent decades. The trigger was Karnataka's move to design a number of dams, canals and barrages to route the Mahadayi river water to the Malaprabha basin. The state claimed that channelling the river water into the basin of Malaprabha, a tributary of the Krishna, would meet the requirements of water-scarce districts of Bagalkot, Gadag, Dharwad and Belagavi. Goa, seeking redressal to the dispute in 2002, sought the constitution of a water disputes tribunal.

The state also moved the apex court in 2006 with its demand. After sustained efforts by the Goan government, the Mahadayi Water Disputes Tribunal was set up on November 16, 2010. Goa contends that its population is dependent on the river's natural path and any move to divert it would affect its fragile ecosystem. It claimed that the ingress of saltwater in the river, which is dependent on monsoons, will ultimately end up killing the state's mangroves and green belt, disturb the relationship between the people and the land, as well as the ecological balance. The dispute is also around the amount of water that Goa receives. Karnataka claims that the surplus from Mahadayi drains into the sea and that it should be diverted into the deficit basin in Malaprabha to meet the state's drinking, irrigation, agriculture and power generation needs. Goa has, meanwhile, denied Karnataka's claims saying it is a water deficient state and limiting the water supply would adversely impact its agriculture production.

Supreme Court has, for now, stayed the construction of dams and canals by Karnataka on the Mahadayi. Karnataka claims it requires 7.56 thousand million cubic feet (tmc ft) of water from Mahadayi to meet the requirement of farmers of North Karnataka. Goa, nonetheless, has expressed reservations claiming Karnataka may stock excess water in its reservoirs so that it can be used for irrigation in other parts of the state. Mahadayi river rises in the Western Ghats, from the Bhimgad Wildlife Sanctuary in Khanapur taluk of Karnataka's Belagavi district. Flowing westward, it enters Goa from Sattari taluk of North Goa districts. A number of streams join the flow of the river to form the Mandovi which is one of two major rivers that flow through Goa.

It joins the Arabian Sea at Panaji. The Mahadayi river, also spelt Mhadei or Mahadeyi, stretches 111-km. Over two-thirds of the river's stretch lies in Goa (76km). The Mandovi is important for Goa also because it is one of the few sweet-water sources at the state's disposal. Most of Goa's 11 rivers contain salt water and Mandovi ensures water security as well as being an important place to source fish for the state.

Cauvery Dispute Present and Future:

The dispute therefore involves 3 states and one Union Territory (Pondicherry). The genesis of the dispute is 150 years old and dates back to the two agreements of arbitration in 1892 and 1924 between the then Madras presidency and Mysore. It entailed the principle that the upper riparian state must obtain consent of lower riparian state for any construction activity viz. reservoir on the river Cauvery. From 1974, Karnataka started diverting water into its four newly made reservoirs, without the consent of Tamil Nadu resulting into a dispute. To resolve the matter, Cauvery Water Dispute Tribunal was established in 1990 which took 17 years to arrive at the final order (2007) on how Cauvery water should be shared between the 4 riparian states in normal rainfall conditions. In distress years, pro-rata basis shall be used, it instructed.

The government again took 6 year and notified the order in 2013. This was challenged in Supreme Court which recently directed Karnataka to release 12000 cusecs of water to Tamil Nadu prompting protests in the State. Water Shortage Reasons On the supply side, as the country is in a grip of a drought for last 2 years, the Cauvery basin reservoir in Karnataka and Tamil Nadu is 30% and 49% lower than average of last 10 years. Second, there has been deforestation of the region which has reduced rainfall significantly. Third, the neglect and overuse of groundwater, traditional tanks and ponds have profoundly enhanced dependence on the river. On the demand side, the need and definition of need has expanded. Rapid urbanization and increasing population around the river is the primary reason. Also, the cropping pattern of agriculture has shifted towards sugarcane which is highly water intensive and certainly unviable as of now. Given the supply demand mismatch, perhaps no formula can satiate the needs of all the parties. There needs to be a more scientific solution taking the long term in perspective. Solution The states need to shed the regional approach as the solution lies in cooperation and coordination, not in conflict. The planning must be done at the basin level to make the solution sustainable and ecologically viable.

The long due creation of Cauvery Management Board and a regulatory authority to enforce the tribunal's orders must be done immediately. The solution should be people centric such as leveraging 'Cauvery Family'-a group formed by farmers of both states to disperse the clouds of hostility. In the long term, there is a need to recharge the river through afforestation, river linking etc.

Second, cleaning up of the pollution hotspots must be done with a stringent check on the industrial pollution.

Third, an increased focus is needed on increasing water use efficiency viz. micro irrigation, awareness in people to prudently use water and water smart strategies. Fourth, cropping pattern must change towards millets, jowar and other indigenous crops which use much less water and are protein rich. The above steps will ensure a sustainable use of limited water resources. This is an imperative for our country India as we are constantly moving towards water stressed conditions. We as individuals must do our bit to conserve and efficiently manage water to make our country achieve the Goal 6 of the Sustainable Development Goals by 2030.

Conclusion

Policy discourses about interstate water disputes in India appear largely legalist in nature. Through a discussion of various disputes and their historical analysis, the paper presents extensive evidence highlighting the nature and critical role of politics in the emergence, recurrence, mitigation and resolution of interstate water disputes. In spite of this, policy debates tend to evade political questions and issues in their analysis. Some emerging key conclusions are discussed here.

While politics is a major gap, even the legalist debates seem misplaced. A review of these debates reveals that the ineffectiveness of legislations and policies stems largely from institutional inadequacies and governance deficit. More specifically: tribunals fail to ensure appropriate institutions are in place to implement awards; and, tribunals and their awards are undermined by jurisdictional conflicts with the Supreme Court. Clearly, the relevant act, ISDA and its provisions were not used and/or implemented in letter and spirit. Instead of addressing this as such (a governance problem), debates take a typical (macro)myopic view and call for policy and legislative changes. In somewhat futile exercise, the debates search for causes and solutions in abstract and complex terrains such as: Constitutional (re)organization of legislative powers about water, repealing of ISDA, imposition of original jurisdiction of Supreme Court and so on. Further, the factors contributing to supposed ineffectiveness of ISDA are extraneous in nature and are erroneously attributed to ineffectiveness of ISDA. Lack of compliance of tribunal awards by States is a governance problem.

Politically motivated actions by States and Supreme Court's excessive engagement are again external factors. Procedural deficiencies (Nariman 2009) in the functioning of tribunals require reconsidering the institutional design. ISDA empowers tribunals to recommend appropriate institutions to ensure that the awards are implemented; but tribunals do not pay adequate attention to supply and design of institutions while giving away awards. The jurisdictional conflict or excessive engagement of Supreme Court with interstate water disputes is a legal matter to be resolved. Though, this cannot be treated as purely a jurisdictional conflict; but has to be situated in its historical context. It is important to understand why the Constitutional framers deemed it necessary to exclude interstate water disputes from the original jurisdiction of the Supreme Court. The flaws associated with governance and institutions are however of immanent nature and have deeper roots. Interstate water disputes recur partly because their history and evolutionary context provide opportunities for contestations. D'Souza's (2006) insistence that interstate water disputes are a manifestation of reproducing colonial and imperial structural conditions deserves merit here.

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