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Streamlining Unity: Analysing the Role of Central Government in Interstate River Water Dispute Resolution

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ABSTRACT

India, is the foundation of one of the biggest democracies in the world and is a union of states. There is one powerful union government that oversees 28 states and 8 union territories. This government is vested with authority by the Indian Constitution. The Indian Constitution is a federal document because it created a dual polity, with the Union at the center and the States at the periphery, each with sovereign powers to be used in the areas that the respective constitutions designate. River waters are considering as an important source of development of any nation because hydro water helps in producing electricity. Water is also useful for carrying out our agriculture, manufacturing and many more and we all know India is an agrarian economy and definitely disputes related to river water is very normal that they arose between the states regularly, but important is to find out whether the union government is able to perform his task that his assign by this great freedom of charter as a guardian of states. This article examines the constitutional status of 'water' as a subject, and why there is frequently dispute arising between the states on interstate river water. This also examines the role of central government in resolving interstate river dispute in light of various historical interstate river disputes in India. There is a critical analysis of the role of central government in resolving interstate river water dispute as a dispute resolving mediator. The central aim of this research article is to explore whether the role played by central government in resolving the dispute related to interstate river dispute is sufficient or anything needs more to be done in light of intentions of our constitutional makers' intention behind enacting this federal structure of our constitution.

Keywords: Democracy, Constitution, River water, Agriculture, Interstate.

I. INTRODUCTION

Interstate water disputes have been a significant challenge in India due to various factors such as economic water scarcity, pollution of rivers, groundwater over-extraction and unequal

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distribution of water resources. The Krishna Water Disputes Tribunal's award has been a crucial point of departure for understanding and addressing these conflicts in the case of river Krishna basin, which is located in the southern India.³ According to the sources, one of the major reasons for water scarcity in India is the low level of technology and outdated water treatment facilities. This leads to poor water quality, making it unsuitable for consumption. Another contributing factor is the severe over-extraction of groundwater due to the low utilization rate. As a result, water resources are being depleted at an alarming rate, exacerbating the water scarcity issue. Additionally, the pollution of rivers by sewage, chemical fertilizers, and pesticides has further worsened the water quality in India. Moreover, the lack of developed infrastructure and a poor economy in rural areas contribute to the water scarcity problem in India. These issues are particularly evident in villages, where a significant portion of the Indian population resides. The inadequate access to safe drinking water, electricity, communication, and sanitation in these areas further exacerbates the water scarcity problem. Moreover, the rapid industrialization in India over the past two decades has also exacerbated the water scarcity issue. As industrialization increases, the demand for water also rises, putting additional pressure on already limited water resources. One of the key examples of interstate water disputes in India is the conflict over the waters of the Krishna river. The Krishna Water Disputes Tribunal's award aimed to resolve the disagreements between Karnataka, Maharashtra, and Andhra Pradesh over the sharing of Krishna river waters. The award which was delivered in the particular case of the tribunal attempted to strike a balance between the economic and political interests of each state, taking into account their water requirements for agriculture, industry, and domestic use. However, the issues related to the centralisation-decentralisation ideas in water related conflicts in the river Krishna (basin) have highlighted the complexities in the legal and institutional relationships of the country. This dynamic raises questions about the economic, political, national, international, colonial, and post-colonial dimensions of river basin development. The award of the Krishna Water Disputes Tribunal attempted to address these complexities, but it also revealed a gap in our understanding of these relationships and their implications for sustainable water management. Interstate water disputes in India have been a longstanding issue, with various factors contributing to the scarcity and distribution challenges faced by different states.⁴ Some of the main factors contributing to interstate water disputes in India include uneven spatial and temporal distribution of water resources, a large population, low science and technology, and poor capacity for sewage treatment. The limited technology and

³ Acharya Deepti, *Water and Policy in India (Political, Rights and Governance)*, (Routledge, 2021), at 1-11

⁴ <https://jalshakti-dowr.gov.in/krishna-water-disputes-tribunal-reports/> (last visited on April 29, 2024)

outdated water treatment facilities in India contribute to poor water quality, while pollution from sewage, chemical fertilizers, and pesticides further degrade the water resources. The low utilization rate of water resources in India also exacerbates the water scarcity issue, leading to the over-extraction of groundwater.

Dr. B.R. Ambedkar once said that the Indian Constitution is a federal document because it created a dual polity, with the Union at the center and the States at the periphery, each with sovereign powers to be used in the areas that the respective constitutions designate. But he said that the Indian Constitution might be both unitary and federal depending on the needs of the moment and the situation, avoiding the rigid mold of federalism that the American Constitution was forced into⁵. Water is considered as “life's matter and matrix, mother and medium. There is no life without water.” and some philosophers also believed that “Thousands have lived without love, not one without water.” But this is not only role water plays in our life. River waters are consider as an important source of development of any nation because hydro water helps in producing electricity, water is also useful for carrying out our agriculture, manufacturing and many more and we all know India is an agrarian economy and definitely disputes related to river water is very normal that they arose between the states regularly, but important is to find out whether the union government is able to perform his task that his assign by this great freedom of charter as a guardian of states. We need a strong centre which should look after the state and binds them in one thread as per Nehru ji⁶.

Article 262 of the Indian Constitution allows the parliament to enact laws for the resolution of any dispute or grievance pertaining to the use, distribution, or control of any interstate river. Some water-related topics fall under state list Entry 17, which covered the areas like water supplies, irrigation and canals, drainage and embankments, water storage, and water power. On the other hand, entry 56 of the union list covered some subjects like regulation and development of interstate rivers, river valleys to in the public interest. Using the same authority, parliament passed the "Interstate River Dispute Act 1956," which gave it the authority to establish boards to settle interstate river disputes. However, this act does not aid in solving the problem and makes it worse because states' resistance and increased politicization of the topic of water disputes prevent parliament from carrying out its duties under the act, which is based primarily on cooperative federalism ideals. Thus, this is the actual issue that needs to be resolved, adding to the complexity of our cooperative federalism.

⁵ B.R. Ambedkar, *Constituent Assembly Debates, Official Report*, vol. 1, no. 2 (November 4, 1948), at 365-366.

⁶ *Constituent Assembly Debates, Official Report*, vol. 2, no. 3 (December 4, 1948), at 360-361.

II. INDIAN FEDERATION

According to the Indian Constitution, India is an eternal and unbreakable unity. In order to act upon various powers which was given, with independence, mutual adjustment, respect, understanding, the states and the centre must cooperate and coordinate as independent entities. A fundamental component of federation is tension and conflicts between the interests of the centre and the unit that it respects. India, being a big, diversified nation with many distinct cultures and customs, it was incredibly challenging to govern the entire country with a powerful central government and unbreakable ties to the individual states., In contrast, American Indian states united to create a union by working together and allocating legislative topics into three lists under the Indian Constitution's seventh schedule, which allows for This is the primary form of unique cooperative federalism that we had: the union list, which contains the matters on which the centre has the exclusive authority under which it can legislate, the state list, which contains the matters on which the state has the exclusive authority to make laws, and the concurrent list, which contains the matters on which the state and the centre have the same authority to make laws. According to Prof. K.C. Wheare's book "Federalism", one of the most widely accepted definition of Indian federalism is that it is a method of dividing authority so that general and local governments are each, within the scope of their authority, coordinate and independent. Based on an analysis of K.C. Wheare's description above, India can be categorized as a federation because there is a separation of powers between the union government and the state government. The Indian federation operates on a top-down model, with states deriving their authority from the constitution drafted by Union representatives. In contrast to bottom-up federations, where the units come together to form a nation, as is the case with the USA, top-down federations divide the nation into several states for administrative convenience.⁷

III. INTERSTATE RIVER WATER DISPUTES

Rivers in India hold significant importance due to various factors, particularly their association with Indian mythology and national progress. The inception of the universe is attributed to rivers, considered the elemental matter. These are components of the five fundamental elements of nature, known as pañcamahābhūta, many living creatures depend on rivers as their source of life. Water is supplied for various essential purposes such as drinking, irrigation, transportation, and electricity generation⁸. In addition, wetlands, rivers, lakes, and oceans are also upheld by them, supporting their biodiversity and ecosystem services. In Hinduism, rivers are revered as

⁷ K. C. Wheare, *Federal Government* (Oxford University Press, 1946) at 278

⁸ Rig Veda, Book 7, Hymn 95, "The Nāsadiya Sūkta," translated by Klaus K. Klostermaier (Oxford University Press, 1995), at 172

divine entities⁹. These ethereal beings are revered and worshipped as divine goddesses with the power to cleanse transgressions and bestow blessings. The Ganges or Ganga is revered as the holiest of rivers. She is believed to be born to Himavan and Menavati, the sister of Parvati, and one of the spouses of Vishnu. The Yamuna, Sindhu, Narmada, Godavari, Krishna, and Kaveri are also among the significant rivers¹⁰. According to this philosophy, water is beneficial to all things without engaging in competition¹¹. It possesses the ability to flow in low places that others may disregard, and it effortlessly adjusts and adapts to its surroundings. Rivers, likewise, serve as a wellspring of inspiration and foster creativity for numerous artists, poets, musicians, and writers¹². Because of these reasons that in India the interstate river disputes were very prominent and frequently occur.

In the Constitution of India, relevant entries for understanding the allocation of powers in water management are Entry 17 in the State List, Entry 56 in the Union List, and Article 262. Entry 17 in the State List pertains to water supplies, irrigation and canals, drainage and embankments, water storage and water power but subject to the provisions of Entry 56 of List I i.e. regulation and development of inter-state rivers in the public interest. In essence, the legislative authority of state governments under Entry 17 remains intact only because the parliament has not extensively exercised its powers under Entry 56 of the Union List. Consequently, stating unequivocally that water is solely a state subject is an oversimplification, especially when considering that many of India's vital rivers are inter-state in nature.

Moreover, Article 262 of the Constitution addresses the adjudication of disputes related to interstate rivers or river valleys. It empowers parliament to enact laws for the resolution of disputes concerning the use, distribution, or control of waters in interstate river basins. This means that state legislative competence under Entry 17 must be exercised in a manner that does not prejudice the interests of other states and lead to a water dispute, as defined by Article 262. This aspect has been underscored in the decisions of various tribunals.

It's crucial to remember that water is included in both the Union List and the State List, not the Concurrent List. The Concurrent List's mention of "economic and social planning" serves as more evidence of the potentially important role the federal government is allocated in relation to interstate rivers and river valleys. Major and medium-sized irrigation, hydropower, flood control, and multipurpose projects are subject to central approval as part of the national plan as

⁹ *ibid*

¹⁰ *ibid*

¹¹ Michael J. Waterhouse, *Rethinking Green Musicology: Ecocritical Perspectives* (Routledge, 2017), at 145-147.

¹² *ibid*

a result of this inclusion. Despite opposition from several state governments, this provision is still in place. The primary role in water resource management is further shaped by regulations pertaining to environmental protection and forest removal. It is significant to remember that water is included in both the Concurrent List and the

The application of Entry 56 in the Union List has been limited, with the River Boards Act¹³ being the primary legislation under this entry. However, this act only establishes advisory boards and lacks provisions for River Basin Authorities with managerial powers. Notably, no river boards, even in an advisory capacity, have been established under this act. The Damodar Valley Corporation, predating the Constitution, was modelled after the Tennessee Valley Authority but has not functioned as a river valley authority. Although there have been attempts to establish boards and authority in particular river basins—the Brahmaputra Board, the Betwa River Board, and so forth—their functions have stayed restricted and they haven't developed into all-encompassing river basin authorities. State identities have shown to be strong obstacles to the creation of these kinds of authorities. As a result, the common practice has been to divide up river resources among the states involved in interstate agreements or tribunal rulings, letting each state administer its portion inside its borders. Managing water resources in India is a complicated issue that falls outside the purview of state jurisdiction due to the intricate interaction between constitutional provisions and pragmatic concerns. Even though the states are ultimately in charge, the federal government plays a critical role, particularly when it comes to managing interstate rivers, and the current legal framework allows for significant federal engagement. The necessity for a more nuanced understanding of water management in the context of federalism is highlighted by the absence of comprehensive river basin authority and the enduring nature of interstate conflicts.

IV. HISTORICAL INSTANCES OF INTERSTATE RIVER DISPUTES IN INDIA

1. The Cauvery River: A Persistent Source of Dispute and Complexity

Despite being a vital resource for multiple Indian states, the Cauvery River has consistently been a source of contention and legal issues. When tensions between the main riparian states rise during monsoon failures, its importance is most noticeable. In 2003, a particularly explosive scenario led the Indian Supreme Court and the Government of India to consider the bold notion of connecting the Himalayan Rivers with the peninsular region in order to bridge the divide between regions with a plenty of water and others with a shortage.¹⁴ The Cauvery River flows

¹³ Act No. 60 of 1956

¹⁴ Videh Upadhyay, *Cauvery, Courts and Some Larger Questions: Elusive Search for Judicial Reason, Economic and Political Weekly*, vol. 37, no. 35, 3583–85 (2002).

through Tamil Nadu, Kerala, Karnataka, and the union state of Puducherry for a distance of 802 kilometers. Its large drainage area, 81,155 square kilometers, gets rainfall in a 3:7 ratios from the northeast (October-December) and southwest (June-September) monsoons. The basin receives 1,000 to 1,400 millimeters of rain on average each year, with the northeast monsoon accounting for around 70% of this total.¹⁵ Paradoxically, this excessive rainfall often leads to floods and cyclones, causing more harm than benefit to the farmers in Tamil Nadu¹⁶.

Different from other interstate water disputes like Krishna, Godavari, or Narmada, is the Cauvery water issue. The Cauvery conflict is about allocating water resources that have already been used, as opposed to those disputes, which rely on the usage of untapped water potential. Unlike other interstate water conflicts, the Cauvery River is unusual in that its available water potential has already been overexploited.¹⁷ The core issue at the heart of the Cauvery dispute is the protection of the extensive irrigation potential that has been developed over the years. Karnataka's irrigation expansion gained momentum in the late 1970s, with its irrigated land area growing from 1.24 lakh hectares in 1901 to nearly 10 lakh hectares today. Tamil Nadu, in contrast, started with a substantial 5.77 lakh hectares in 1901 but currently stands at approximately 8 lakh hectares¹⁸. Karnataka justifies its significant irrigation expansion by pointing to historical injustices it faced, claiming it was denied its rightful share of Cauvery waters for centuries. As a lower riparian state, Tamil Nadu feels it bears the brunt of floods, droughts, and pollution.

Millions of people's livelihoods and the production of food are highly dependent on the Mettur dam in Tamil Nadu and the Krishna Raja Sagara (KRS) dam in Karnataka. Tamil Nadu is dependent on Karnataka's generosity for water releases during years of water scarcity, but Karnataka maintains that it cannot give water when its own farmers aren't receiving enough.

Tamil Nadu claims the water released from Karnataka's reservoirs is not a charity but rather the realization of its people's millennia-old rights. The Tamil Nadu government petitions the Supreme Court on a regular basis to seek legal remedies. Tamil Nadu has been a steadfast supporter of the creation of the Cauvery Management Board (CMB) and the publication of the final award in the Union Gazette, in addition to the demand for water release from Karnataka's reservoirs. The Supreme Court ordered the Government of India to form the CMB within four

¹⁵ Chokkakula, Srinivas, "Interstate Water Disputes: Perils and Prospects of Democratisation," 49 *Econ. & Pol. Weekly* 75 (2014).

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ Ramaswami, V., "Law Relating to Equitable Apportionment of the Waters of Interstate Rivers in India," 20 *J. Indian Law Inst.* 505 (1978).

weeks on September 20, 2016, although the first demand was satisfied in 2013.¹⁹

The CMB, as envisioned, is an official body constituted by the Indian government responsible for implementing the directions of the tribunal for water-sharing between states. Its formation is mandated by the final award of the Cauvery Water Disputes Tribunal. The CMB comprises a chairman with extensive irrigation engineering experience, two full-time members, two representatives from the central government, and representatives from all basin states. The CMB's primary role is to manage all reservoirs, ensuring the distribution of water among basin states as specified in the final award, both in normal and deficit years. Crucially, the CMB enforces a strict monthly schedule for water release, a provision that elicits contrasting reactions from Karnataka and Tamil Nadu, with one state's loss becoming the other's gain²⁰.

A long-running dispute over the sharing of water from the Cauvery River and its tributaries between the states of Karnataka, Tamil Nadu, Kerala, and Puducherry has been resolved in large part thanks to the central government of India. These are a few of the ways the federal government got involved in this disagreement. To settle the water dispute between the four states, the Central Government established the Cauvery Water Disputes Tribunal (CWDT) in 1990. This tribunal was given authority under Section 4 of the Inter-State River Water Disputes Act, 1956. When the CWDT announced its final award in 2007, it gave Tamil Nadu 419 million cubic feet (TMC), Karnataka 270 TMC, Kerala 30 TMC, and Puducherry 7 TMC¹³. In response to state petitions against the CWDT award, the Supreme Court of India rendered a final decision in 2018 that reduced Tamil Nadu's share and granted Karnataka an additional 14.75 TMC of river water. Karnataka: 284.75 TMC, Tamil Nadu: 404.25 TMC, and Kerala: 30 TMC are the final figures for 740 TMC.²¹ In order to guarantee adherence to and execution of the CWDT treaty as amended by the Supreme Court, the central government launched the Cauvery Water Management Plan in 2018, establishing the Cauvery Water Management Authority (CWMA) and the Cauvery Water Regulatory Committee (CWRC). The CWMA is a legally mandated organization led by a president chosen by the federal government, with members drawn from each of the four states. A technical organization called the CWRC helps the CWMA monitor and control the water exiting the reservoirs.²² In 2020, the Inter-State River Water Disputes Act, 1956 was changed by the federal government to provide a deadline for interstate river water disputes to be resolved by one of the different tribunals. The amendment also established the

¹⁹ Rani, Midatala, and Middatala Rani, "Historical Background of the Cauvery Water Dispute," 63 Proceedings of the Indian History Congress 1033 (2002).

²⁰ *supra*

²¹ Jeyaranjan, J., "Cauvery Dispute: Changing Paradigms," 33 Econ. & Pol. Weekly 2900 (1998).

²² Janakarajan, S., "The Cauvery Water Dispute: Need for a Rethink," 51 Econ. & Pol. Weekly 10 (2016).

Dispute Resolution Committee (DRC), a central government-sponsored body that provides its findings to the central government and settles disputes amicably through negotiations within a year (extendable by six months). The Cauvery river dispute is a long-standing and complex issue still it's pending, that involves historical agreements, legal judgments, political interests, and environmental factors. It requires a cooperative and sustainable approach to water management that balances the needs and interests of all the stakeholders. Many interstate water conflicts, however, remain unresolved or controversial despite these efforts for a variety of reasons, including delays in tribunal formation or operation owing to legal or administrative obstacles, political or popular pressure may cause states to refuse to implement or comply with tribunal awards, lack of adequate data or information on water resources or their utilization by states. Therefore, there is a need to strengthen the constitutional mechanism for resolving interstate water disputes by addressing these challenges and ensuring that the interests and rights of all stakeholders are protected and balanced²³.

V. INTERSTATE RIVER WATER DISPUTE LAWS- INTERSTATE RIVER WATER DISPUTE ACT 1956

On the 28th of August, 1956, the Indian Parliament passed an Act to address the potential conflicts pertaining to the utilization, management, and allocation of an inter-state river or river valley²⁴. On the verge of the reorganization of states based on linguistic considerations, the Act was put into effect, foreseeing the possibility of forthcoming disputes among the newly established states regarding water resources. The Act also affirms the validity of any prior agreements, if applicable, made by the basin states for the utilization of water from an inter-state river or river valley²⁵. This Act was backed by Article 262 of the constitution of India which deals with the resolution of conflicts or grievances pertaining to waters of inter-state rivers or river valleys. Furthermore, the Parliament is granted the authority to pass legislation for the purpose of facilitating such resolution, while simultaneously abolishing the legal authority of all courts, except for the Supreme Court, in relation to these specific matters.

The Act grants authority to the Central Government to establish a temporary tribunal for resolving disputes between multiple states regarding the water of an inter-state river or river valley. The decision rendered by the tribunal shall be considered conclusive and obligatory to

²³ *ibid*

²⁴ Srinivas Chokkakula, *Interstate Water Disputes: Perils and Prospects of Democratisation, Economic and Political Weekly*, vol. 49, no. 9, 75–81 (2014).

²⁵ *ibid*

all parties involved²⁶. The Act stipulates that a tribunal can be requested by any state from the Central Government for any kind of resolution pertains to the river water conflicts. Central Government has the option to establish a Water Disputes Tribunal within a year of receiving the complaint, in the circumstances where the negotiations are deemed insufficient in resolving the dispute²⁷.

The Act stipulates that the tribunal must be comprised of a Chairman and two additional members. These individuals must be individuals who currently hold, or have previously held, the position of Judge in either the Higher court whether it can be Supreme Court or any High Court of any state. Two assessors shall be appointed by the tribunal, who must possess special knowledge or practical experience in areas pertaining to engineering, agriculture, hydrology, or geology²⁸. According to the Act, the tribunal is responsible for conducting an investigation into the matters brought before it, and then submitting a report that outlines the factual findings and provides its decision on the referred matters within a timeframe of three years²⁹. However, there are criticism of the Act like, there is no specific time limit set by the Act for the resolution of river water disputes. The Godavari and Cauvery water disputes have resulted in prolonged proceedings and substantial delays in their resolutions³⁰, the Act compels the use of adjudication as the sole resolution for disputes, a method that frequently leads to contentious lawsuits and inflexible stances taken by the states. The Act does not include provisions for alternative dispute resolution mechanisms like negotiation, mediation, arbitration, or conciliation. Unfortunately, the Act fails to guarantee adherence to the rulings of the tribunals or the Supreme Court. Frequently, states opt to defy or question the judicial mandates, resulting in constitutional crisis and causing unrest among the general public. To illustrate, Karnataka declined to allocate water to Tamil Nadu in accordance with the Cauvery tribunal's ruling in 2012³⁴. The Act also fails to acknowledge the changing circumstances and demands of the river basin states caused by population growth, urbanization, industrialization, climate change, and environmental concerns. The Act does not encompass any provisions for evaluating or amending the tribunal's award concerning new facts or situations.

In the year 1956, the River Boards Act was established, encompassing various noteworthy features and key provisions. The Parliament passed the Act with the aim of setting up River Boards to oversee and promote the regulation and development of inter-State rivers and river

²⁶ *ibid*

²⁷ Section 3 of Interstate River Water Disputes Act, 1956, Act No. 60 of 1956.

²⁸ Section 4 of Interstate River Water Disputes Act, 1956, Act No. 60 of 1956.

²⁹ Section 9 of Interstate River Water Disputes Act, 1956, Act No. 60 of 1956.

³⁰ Section 6 of Interstate River Water Disputes Act, 1956, Act No. 60 of 1956.

valleys³¹. The Central Government has the authority to create a River Board upon request by a State Government or by itself, after consulting with relevant governments. The purpose of this Board is to provide advice on issues related to the regulation or development of an inter-State river, river valley, or specific parts of it. Additionally, the Board may be assigned other designated responsibilities as mentioned in the notification³². According to the Act, a River Board should be composed of a Chairman and additional members appointed by the Central Government. These members should possess expertise in fields such as irrigation, electrical engineering, flood control, navigation, water conservation, soil conservation, administration, or finance³³. According to the Act, a River Board has the authority to create plans for regulating or improving any inter-State river or river valley within its jurisdiction. The Board can also distribute the expenses of implementing the Board's plans and the costs of any associated works among the concerned governments³⁴. The Act disallows any State from imposing any water rate on water that is stored, distributed, or apportioned by the authority of the Board.

The River Boards Act of 1956 is subject to several criticisms. Since no River Board has been constituted under the Act thus far, it has not been properly enforced, despite the fact that there are numerous inter-state water disputes in India. The Act grants the River Boards just an advising role; it gives them no affirmative jurisdiction or regulatory authority. The Act fails to include any provision for resolving conflicts or disputes between the States or between the States and the Board. The Act disregards the changing circumstances and demands faced by the river basin States resulting from population growth, urbanization, industrialization, climate change, and environmental concerns.

Some of the major issues and challenges are related to that ISRWD Act does not specify any time limit for referring a dispute to a tribunal, constituting a tribunal, adjudicating a dispute by a tribunal, or implementing a tribunal's award. As a result, there have been long delays at every stage of the dispute resolution process. For instance, the Cauvery Water Dispute Tribunal took 16 years to give its final award, which was challenged by all the parties in the Supreme Court. The Supreme Court took another 12 years to give its verdict, which was again contested by some parties. Similarly, the Ravi-Beas Water Dispute Tribunal has been pending since 1986 without any progress³⁵. Inter-state river water disputes often become politicized as they involve issues of regional identity, equity, development, and livelihoods. Political parties tend to exploit

³¹ Section 4 of River Boards Act, 1956, Act No. 60 of 1956.

³² Section 5 of River Boards Act, 1956, Act No. 60 of 1956.

³³ Section 14 of River Boards Act, 1956, Act No. 60 of 1956

³⁴ Section 16 of River Boards Act, 1956, Act No. 60 of 1956.

³⁵ S.P. Aiyer, "The Indian River Boards Act: A Critique," 1958 *Indian Law Review* 175.

these sentiments for electoral gains and mobilize public opinion against other states or the Centre. This creates an atmosphere of hostility and mistrust among the riparian states and hampers any possibility of negotiation or cooperation. For example, the Karnataka-Tamil Nadu dispute over Cauvery water has witnessed several instances of violence, bandhs, protests, and defiance of judicial orders by both states³⁶.

1. **Fragmentation:** The ISRWD Act envisages a separate tribunal for each inter-state river water dispute, which leads to fragmentation and inconsistency in adjudication. There is no provision for a permanent or single tribunal that can deal with multiple or recurring disputes in a holistic manner. Moreover, there is no mechanism for coordination or integration among different tribunals, or between tribunals and other institutions such as the Central Water Commission, the Central Ground Water Board, or the National Water Development Agency³⁷.
2. **Implementation:** The ISRWD Act does not provide any effective mechanism for ensuring compliance with or implementation of a tribunal's award. The awards are binding on the parties only after they are notified by the central government, which can take several years. Even after notification, there is no guarantee that the states will abide by or implement the awards in letter and spirit³⁸. There is also no provision for monitoring or review of the implementation of the awards by any authority. Furthermore, there is no scope for addressing any changed circumstances or new developments that may arise after an award is given.
3. **Cooperation:** The River Boards Act has remained a dead letter since its enactment as no river board has been constituted under it so far. The existing river boards have been created through other means such as notifications, state reorganization acts, or separate acts of Parliament. However, these river boards have been ineffective in facilitating inter-state cooperation over water resource development as they lack adequate powers, functions, resources, and representation. They have been reduced to mere advisory bodies without any authority to plan, execute, or regulate any projects or schemes on inter-state rivers³⁹.

In view of these issues and challenges, there is an urgent need to reform and strengthen the legal and institutional framework for inter-state river water governance in India. Some of the possible

³⁶ H.M. Rajashekara, "The Nature of Indian Federalism: A Critique," 37 *Asian Survey* 245 (1997).

³⁷ *ibid*

³⁸ *ibid*

³⁹ Ashwini Kumar, "The Indian River Boards Act: A Failure in Federalism," *Economic and Political Weekly*, vol.

solutions are:

1. To address some of these issues, amendments were made to the act in 2002. These amendments mandated that tribunals should be constituted within a year of receiving a request and that awards should be issued within three years, with a possible extension of two more years in certain situations. The awards of the tribunal were given the same legal weight as Supreme Court orders⁴⁰.

Despite these amendments, challenges persisted. States sometimes approached the Supreme Court under Article 136 (Special Leave Petition), and private individuals invoked Article 32, alleging violations of right related to life. Moreover, the composition of the tribunal remained largely judicial, causing limited differentiation from the Supreme Court bench. Delays also occurred due to data unavailability.

In response to these ongoing challenges, the government introduced the Inter-State Water Disputes (Amendment) Bill in 2017. This bill proposed the creation of a Dispute Resolution Committee comprising experts from various fields to expedite dispute resolution within one year⁴¹. The tribunal would only be involved if the committee failed to reach a settlement. Additionally, the bill called for the establishment of a Single Permanent Tribunal with multiple benches and the development of a transparent national-level data collection system for each river basin, managed by a single agency.

Despite these efforts, several issues persist with inter-state water dispute tribunals in India, including protracted proceedings, opacity in the institutional framework, and lack of multidisciplinary composition in tribunals, inadequate water data, and the increasing politicization of water disputes. These challenges continue to hinder effective resolution mechanisms.

VI. REPORT OF SARKARIA COMMISSION ON INTERSTATE RIVER DISPUTES

The Sarkaria Commission was set up in 1983 by the central government to examine the relationship between the Centre and the states in India. One of the issues that the commission dealt with was the dispute related to the inter-state river-water, which are a source of conflict and litigation among the states that share river basins. The commission submitted its report in 1988, and made several recommendations to improve the institutional and political framework for resolving such disputes⁴².

⁴⁰ *ibid*

⁴¹ *ibid*

⁴² Sarkaria Commission on Centre-State Relations, Vol. IV: Interstate River Water Disputes, at 10 (Government

The commission observed that the existing Inter-State Water Disputes Act, 1956, which provides for the constitution of tribunals to adjudicate disputes, had several shortcomings and limitations. The tribunals took a long time to give their awards, which were often challenged in courts, leading to further delays and uncertainty. The commission also noted that the tribunals lacked adequate data and information, and did not adopt a holistic approach to water resource management. Moreover, the tribunals' awards were not binding on the parties, and there was no mechanism to ensure their implementation.

The commission suggested that the Inter-State Water Disputes Act should be amended to address these issues. Some of its key recommendations were:

- The central government should constitute a tribunal within two years of receiving an application from a state, or suo-moto, if it is satisfied that a dispute exists.
- The tribunal's award should become effective within five years from the date of its constitution, and should have the same force as an order of the Supreme Court.
- The tribunal should have access to a national data bank and information system, and should be empowered to seek necessary data from the states.
- The tribunal should adopt a river basin approach, and consider ecological, environmental, social and economic aspects of water resource development.
- The tribunal should also suggest measures for cooperation and coordination among the states for optimal utilisation of water resources.

The commission also proposed that a River Basin Authority should be established for each inter-state river basin, with representatives from the Centre and the states. The authority would be responsible for planning, development and management of water resources in an integrated manner. The authority would also facilitate dialogue and negotiation among the states, and help in implementing the tribunal's award.

The commission's report was aimed at promoting cooperative federalism in inter-state river water governance. It recognised that water is a national asset, but also a state subject under the Constitution. It sought to balance the rights and interests of both the Centre and the states, and to foster trust and cooperation among them.

However, the commission's report did not receive unanimous acceptance from the states. Some states expressed reservations about some of its recommendations, such as giving more power to the Centre to appoint tribunals suo-moto, or making tribunals' awards binding and

of India, 1987).

enforceable. Some states also opposed the idea of creating river basin authorities, fearing that they would infringe upon their autonomy and sovereignty over water resources.

As a result, most of the commission's recommendations have not been implemented so far. This particular Act has been amended only once in 2002, but without incorporating any of the commission's suggestions. The River Basin Management Bill, 2018, which is based on some of the commission's proposals, is still pending in Parliament. The inter-state river water disputes continue to be unresolved or contentious, with several tribunals functioning or pending for decades.

Therefore, there is a need to revisit and revive the Sarkaria Commission's report on inter-state river water disputes, and to implement its recommendations with suitable modifications as per the current context. This would help in creating a more effective and cooperative framework for inter-state river water governance in India.

VII. ROLE PLAYED BY JUDICIARY IN RESOLVING THE DISPUTE RELATED TO INTERSTATE RIVER-WATER

In India, the role of the judiciary in resolving interstate river water disputes is an intricate and fiercely debated matter. The power to make laws for the adjudication of such disputes and to exclude the jurisdiction of the Supreme Court and other courts in respect of them has been bestowed upon the Parliament by the Constitution of India. The provision mentioned in Article 262 of the Constitution has been implemented through the enactment of the Inter-State River Water Disputes Act, 1956 (ISWD Act) by the Parliament.

In the Leading case of **State of Karnataka vs. State of Tamil Nadu**⁴³, the Supreme Court In this leading case, focused on the resolution of the Cauvery water dispute involving Karnataka, Tamil Nadu, Kerala, and Puducherry. The final award of the Cauvery Water Disputes Tribunal (CWDT) was deemed valid by the Supreme Court, albeit with certain alterations. In a significant development, the Supreme Court has announced an upward revision in Karnataka's water allocation by 14.75 TMC (thousand million cubic feet), while simultaneously decreasing Tamil Nadu's allocation by an equivalent quantity. In its ruling, the Supreme Court instructed the Centre to create a plan for executing the award within a span of six weeks. Additionally, the court established a Cauvery Management Board and a Cauvery Water Regulation Committee with the objective of achieving this aim. In applying the principle of equitable apportionment, the Supreme Court took into account several factors including the availability of water,

⁴³ A.I.R (2006) 4 S.C.C. 127

irrigation potential, cropping pattern, and drinking water needs, among others. During the process of resolving the dispute, one should consider several factors before making a final decision.

Further in the leading case of **State of Punjab vs. The State of Haryana**⁴⁴, Supreme Court ruled addressed the water dispute concerning the Ravi-Beas Rivers involving Punjab, Haryana, and Rajasthan. The validity of two agreements signed in 1955 and 1981, aimed at sharing the waters of Ravi-Beas among these states, has been upheld by the Supreme Court. In a demonstration of its authority, the Supreme Court confirmed the legality of Section 78(1) of the Punjab Reorganisation Act, 1966. This provision bestowed the central government with the power to construct canals for the transportation of water between states. The completion of the Satluj-Yamuna Link (SYL) canal within one year was ordered by the Supreme Court, with the provision that if Punjab failed to meet this deadline, Haryana would be permitted to carry out the construction within Punjab's territory. Applying the principles of federalism and cooperative federalism, the Supreme Court ruled that no state has the right to claim exclusive ownership over inter-state river waters.

Further in the leading case of **Narmada Bachao Andolan vs. Union of India**⁴⁵, This case revolves around a very significant social and environmental movement advocating for the protection of the Narmada River in India. The Narmada Bachao Andolan, a non-governmental organization, filed a petition against the Union of India to address the issues associated with the construction of large dams and their repercussions on the local communities and environment. This case brought forth the debate on developmental projects versus the preservation of natural resources, highlighting the need for a sustainable approach for progress. The Union of India (2000) addressed the Narmada water dispute among Madhya Pradesh, Gujarat, Maharashtra, and Rajasthan. The final award of the Narmada Water Disputes Tribunal (NWDT), which distributed the waters of the Narmada river among various states and allowed for the construction of the Sardar Sarovar Project (SSP), has been upheld by the Supreme Court. The Supreme Court directed the authorities to ensure the proper rehabilitation and resettlement of the ousters and affected people by the project. In its decision, the Supreme Court drew upon the principles of the public trust doctrine, sustainable development, and human rights, affirming that the project's overall significance lay in the greater public interest it served, promising to bring benefits to millions of individuals.

⁴⁴ (1990) 4 S.C.C. 439

⁴⁵ (2000) 10 S.C.C. 664

In India, the role of the judiciary in resolving interstate river water disputes is not only crucial but also highly commendable. The judiciary has consistently fulfilled the role of safeguarding the Constitution and ensuring the protection of the states and the people's rights and interests. The judiciary in India has played a significant role in shaping the law and policy concerning inter-state river water disputes, thereby contributing to their development and evolution. On the other hand, the judiciary encounters various challenges and limitations in addressing these matters.

So, we can conclude interstate river water dispute in India is always a controversial in nature since Independence. When we talking about federalism on one hand and Interstate River water dispute on the other hand we can say that in the federal structure country like India, the water issue is very key in nature because it directly hurts the sentiments of the people of that state because as we had already seen above river is connected to people by their religious faith and river is also considered very crucial in light of development of any nation, so in this case if we want to protect and promote the cooperative federalism in country and make our country progress so the time demands that centre should actively play a key mediator role in resolving interstate river dispute and apparatus from this parliament should make new laws to resolve interstate river dispute in an effective manner because as we seen above that law exist there in resolving interstate river dispute but they are ineffective and central government also not play actively role in resolving interstate river water dispute because more politicization of disputes.

VIII. ADOPTION OF INTEGRATED RIVER BASIN MANAGEMENT

Integrated basin management (IBM) is an approach to water resource management which focuses on the whole river basin as a unit, rather than individual segments or sectors. In order to ensure river ecosystems sustainability and resilience, IBM aims at balancing competing needs and interests of a variety of water users, e.g. farmers, industries, the home sector as well as ecological concerns⁴⁶.

Integrated river basin management is an inclusive approach to managing water resources. It recognizes the interconnectedness of various factors related to these resources, encompassing social and economic activities. The primary objective is to create a collaborative framework to facilitate coordination between multiple stakeholders and sectors involved in the planning and management of river basins. This includes, but is not limited to agriculture, industry, energy, environment, and urban development⁴⁷. The overarching goal of integrated river basin

⁴⁶ Ashok Swain, *Mission Not Yet Accomplished: Managing Water Resources in the Nile River Basin*, 61 *J. Int'l Aff.* 201 (2008)

⁴⁷ V. R. Pantulu, *River Basin Management*, 12 *Ambio* 109 (1983)

management is to achieve the utmost economic and societal advantages derived from water resources in a fair and just manner, all the while upholding the preservation and safeguarding of the natural environment⁴⁸.

River basin management takes into account several factors such as:

1. Climate change: has a significant impact on water resources, including their availability and quality. This environmental phenomenon also influences the demand for water and its utilization across various sectors. The objective of integrated river basin management is to adjust to the effects of climate change and minimize its causes through the promotion of water efficiency, renewable energy, and low-carbon development⁴⁹.

2. The growth of industries and population: As human activities demand a greater amount of water, there is a potential for overexploitation, pollution, and degradation of water resources. Integrated river basin management aims to achieve a harmonious equilibrium between the water requirements of various users and sectors, concurrently mitigating or curbing the adverse impacts of hazardous human activities related to chemicals and others, on water resources.

The different water systems interact with each other in multiple ways. Water resources are interconnected both within a specific river basin and also between different basins. The hydrological cycle, comprising surface water, groundwater, wetlands, lakes, and rivers, plays a pivotal role in determining the quantity and quality of our water resources. Integrated river basin management acknowledges the interconnectedness of diverse water systems and endeavours to manage them in a comprehensive and synchronized manner.

3. The health and functioning of a river basin's water resources directly impact the biodiversity and ecosystem services of the area, including its specific plant and animal life. Various species of plants and animals rely on water resources for their habitats, sustenance, and various other benefits. The objective of integrated river basin management is to protect and revive the natural surroundings as well as its diverse range of species. Simultaneously, it seeks to improve its ability to withstand challenges and increase overall efficiency⁵⁰.

The process of integrated river basin management is intricate and ever-changing, necessitating the cooperation, involvement, and synchronization of various individuals and organizations operating at different hierarchical tiers. In order to make informed decisions and successfully

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ Dave Huitema & Sander Meijerink, *The Politics of River Basin Organizations: Institutional Design Choices, Coalitions, and Consequences*, 22 *Ecol. & Soc.* (2017)

implement them, it is essential to have sufficient information, knowledge, and tools at hand.

Integrated river basin management faces several challenges, such as:

Frequently, a river basin spans across regions governed by diverse political groups, such as states, provinces, countries, or regions, leading to interactions among them. Conflicts or disagreements may arise regarding the allocation, of water bodies and its utilization, and stewardship of water resources and bodies. The aim of integrated river basin management is to promote open discussions, collaboration, and peaceful discussions between various political factions in order to establish a shared vision and objectives for the river basin.

A river basin consists of a multitude of stakeholders with various interests, values, perspectives, and expectations related to water resources. Governments, private sector, civil society, local communities, indigenous peoples, women, youth, and various other entities are among the stakeholders in this inquiry. Integrated river basin management seeks to involve and empower all relevant stakeholders in the planning and administration of water resources, while also acknowledging their rights and meeting their requirements. It can foster cooperation and coordination among the states that share the river basin, and reduce the potential for disputes and conflicts over water allocation and use. It also can enhance the efficiency and equity of water use and distribution, by taking into account the needs and preferences of all stakeholders, including local communities, women, marginalized groups, etc.

IX. KEY PROVISIONS OF BILL RELATED TO THE INTEGRATED RIVER BASIN, 2018 (MANAGEMENT)

The River Basin Management Bill for the year 2018, which incorporates several recommendations put forth by the Sarkaria Commission, is currently awaiting approval in the Parliament.

The draft legislation titled "**River Basin Management Bill, 2018**" seeks to establish a comprehensive framework for the integrated management of inter-state river basins in India. In September 2018, the Ministry of Water Resources, River Development and Ganga Rejuvenation prepared and circulated the bill among the states, inviting their comments and suggestions. The introduction of the bill in Parliament has not yet taken place⁵¹.

The legislation draws inspiration from certain suggestions put forth by the Sarkaria Commission, established in 1983 to investigate and evaluate the dynamics between the Central

⁵¹ Robert G. Wirsing, *Hydro-Politics in South Asia: The Domestic Roots of Interstate River Rivalry*, 34 *Asian Aff.* 3 (2007)

and state governments in India. **It was proposed by the commission that a sovereign Authority for each inter-state river basin should be created, consisting of representatives from the Centre and the individual states.** The given responsibility for planning, infrastructure development, and management of water bodies and resources in an integrated manner would lie with the authority. In addition, the authority would play a significant role in promoting dialogue and negotiation between the states, while also assisting in the effective implementation of the tribunal's award.

The bill highlights the following key features:

1. The bill suggests the establishment of 13 River Basin Authorities (RBAs) for 13 inter-state river basins in India. The rivers of India include Indus, Ganga, Brahmaputra, Barak, Mahanadi, Godavari, Krishna, Cauvery, Subarnarekha, Brahmani-Baitarani, Pennar, Mahi, and Narmada.

2. Each RBA will be structured with a two-tier system, wherein there will be a sovereign Council and a working Board. The head of the state i.e. Chief Ministers of all states within the specific basin will form the Governing Council, which will be led by the Prime Minister or his representative. The composition of the Executive Board will include representatives from both the Centre and the states. Moreover, a full-time Chairperson will be appointed by the Centre to lead the Board.

3. The RBA is set to create a comprehensive basin master plan encompassing a water resources development plan, a water allocation plan, an environmental management plan, and a disaster management plan. The approval of the master plan will be granted by the Governing Council, and subsequent notification will be issued by the Centre.

4. The RBA will additionally draft an annual work plan and budget to execute the master plan. The RBA will possess capabilities to secure funds from multiple sources, including grants, loans, fees, charges, and cesses.

5. The RBA undertakes various functions including collecting and managing data on water resources, regulating and monitoring water use, promoting water conservation and efficiency, ensuring adherence to water quality standards, resolving interstate disputes, coordinating with other RBAs, and conducting research and innovation.

The bill includes several important provisions, such as:

1. Section 3 of the bill provides definitions for several terms used throughout the document. These terms include river basin and all various authorities including river basin master plan, river basin state, and more.

2. Section 4 states that the Central Government has the authority to establish River Basin Authorities (RBAs) for each inter-state river basin through an official notification.
3. In Section 5, the composition and functions of the Governing Council of each RBA are specified.
4. In Section 6, the composition and functions of the Executive Board of each RBA are specified.
5. In Section 7, the appointment of a Chairperson and other members of each Executive Board is facilitated through a notification issued by the Central Government.
6. Section 8 of the document pertains to the requirement for every River Basin Authority (RBA) to create a comprehensive river basin master plan.
7. Section 9 of the document outlines the necessary steps for the approval and notification of the river basin master plan. The approval is granted by the Governing Council, while the Central Government is responsible for the subsequent notification process.
8. Section 10 encompasses the necessary measures for implementing the river basin master plan by each RBA.
9. Section 11 deals with the powers and duties entrusted to each RBA. These responsibilities include tasks such as data collection, water regulation, water conservation, water quality control, and dispute resolution.
10. Section 12 outlines the procedure for the establishment of an ISRBDT through notification issued by the Central Government.

There are a few criticisms directed towards the bill, namely:

1. The bill's allocation of authority to the Centre for appointing the Chairperson and members of the RBAs and the ISRBDT excessively weakens the autonomy and sovereignty of states in managing water resources.
2. The bill fails to include any provisions for coordinating with these countries or resolving disputes that may arise from their water usage.
3. The bill fails to sufficiently tackle the problem of climate change, which poses a threat to the future availability and irregularity of water resources. The bill lacks provisions for addressing the effects of climate change on water resources through adaptation or mitigation measures.

X. CONCLUSION

In this present research, Researcher had extensively deals with various issues in detail that are set up by him in starting of this research, such as what are the key features of the federal system in India and how has the federal structure of India evolved over time and what are the implications for the constitutional role of the centre and the states on water governance, how have the centre and the states exercised their constitutional powers and responsibilities on water-related issues, what are the constitutional provisions and principles that govern the use, distribution and control of inter-state river waters in India and how effective has the act been in resolving inter-state river water disputes in India, What are the best practices and lessons learned from interstate water basin management and cooperation that can be applied to India and based upon his researcher concludes that Federal structure country like India, where there is lot of diversity, ethnicity, diverse culture and different languages in that situation centralization of power in one hand definitely caused ruckus in the governance of the country. People of different languages had different expectations from the state to protect and promote their culture so in that situation how one can imagine to build a unity in nation and it sooner or later acceded into small states. Federal system is the need of hour so we adopt top to down bottom federation because it nourishes the dream of our constitutional artist to make a strong centre but not weak states there should be balance of power and hence a new concept of cooperative federalism is given.

In regard to water related governance in the nation we found that because of a vague kind of distribution of water related matter in different lists results into interstate water river disputes and centre has not play a active role in resolving interstate river disputes. Only stand which centre had taken is of mediating and reference of dispute to tribunal which also seen as biggest lacuna in this issue so as a result the time is come to make an amendment in the constitution and inserted water as a concurrent subject matter and adoption of integrated river basin management is also a good solution of this problem.

Hence at last researcher can conclude that his all five hypothesis stands proved which provided that The federal system in India is characterized by a strong centre, asymmetric devolution of powers, and cooperative federalism. The centre and the states have exercised their constitutional powers and responsibilities on water-related issues in a complex and dynamic manner, influenced by politicisation of this issue. The centre-state relations on water issues have varied from cooperation to confrontation, depending on the nature and extent of inter-state water disputes. The Inter-State River Water Disputes Act, 1956 is the main legal framework for

resolving inter-state river water disputes in India. However, the act has been ineffective in resolving inter-state river water disputes in India due to various reasons such as delays, non-compliance, politicization, and lack of enforcement. Interstate water basin management and cooperation that can be applied to India are best management practice to resolve the interstate river dispute.
