

NETWORKING OF RIVERS IN INDIA

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Abstract

The rivers play a vital role in the lives of the Indian people. The rivers in India are truly speaking not only life-line of masses but also for wild-life. The river systems help us in cheap transportation, potable water, electricity, irrigation and as a source of livelihood for increasing population. Proper management of river water is the need of the hour. Some of the major cities of India are situated at the banks of holy rivers. Indian agriculture largely depends upon Monsoon which is always uncertain in nature. There is a severe problem of lack of irrigation in one region and water logging in others. Damage to crops due to drought and pitiable drainage facility could be managed. Decreasing and depleting status of water resources may be one of the most critical resource issues of the 21st century. The core objectives of the paper are to study the case of Re networking of rivers to know how it affected this problem and interlinking of rivers in India (IRL Project) and to study other constitutional provisions affecting inter-state water disputes. At the backdrop of this, the present paper is an attempt to study issues and challenges in interlinking of rivers in India from the point of view of society at large.

Keywords: Water, environment, society, masses, management

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INTRODUCTION

Water is undoubtedly the most important natural resource on the planet, as it sustains all aspects of life in a way that no other resource can. United Nations agencies and the World Bank have claimed that these scarcities will escalate in the future, creating serious problems for humankind and the environment. India needs to adopt a crystal-clear water mission that can help us to use available water resources to fields, villages, towns and industries round the year, without harming our environment. Keeping in mind the increasing demand for water, the government of India has developed a new National Water Policy which claims that water is a prime natural resource, a basic need and a precious national asset.

The NWDA has suggested the interlinking of rivers of the country. This proposal is better known as the Inter-River Linking Project (IRL)¹. It is a mega project that engages money, resources, engineering, management and human understanding. It is designed to ease water shortages in western and southern India and aims to link 30 major rivers. It will also involve diverting the rivers Ganga and the Brahmaputra - two of India's biggest rivers. It is estimated to cost US \$ 123 billion (as per 2002) and, if completed, would be the single largest water development project anywhere in the world. It is expected that properly planned water resource development and management could alleviate poverty, improve the quality of life, and reduce regional disparities, better law and order situation and manage the integrity of the natural environment.

The idea of linking rivers is not new. It was Sir Arthur Cotton who had originally proposed the networking of rivers more than a century ago, and Dr. K. L. Rao, the Minister of Power and Irrigation in the Cabinet of Smt. Indira Gandhi, revived this proposal in 1972. Both were no doubt eminent engineers. Cotton's prime concern was for inland navigational network and Dr. Rao's concern was for irrigation and power. The then-Ministry of Irrigation (now the Ministry of Water Resources) conceived a plan for *National Perspectives for Water Development* in August 1980 (Ministry of Water Resources, 1980) This paved the way for the establishment of the National Water Development Agency (NWDA) in 1982 to work out basin wise surpluses and deficits and explore possibilities of storage, links and transfers, has identified 30 river links, which would connect every major river in the Indian mainland, and has prepared a feasibility report on six of these. The Supreme Court has asked the

¹ <https://youtu.be/ESJMILWA3L4-> A Documentary for NWDA of river inter-linking by deep project

Government of India to complete all planning required to launch the project by 2006 and these projects of inter-basin transfers be completed in the next 10 years or so.

“We also have many challenges in front of us. We have to find a solution to the repeated droughts and floods...The need of the hour is to have a water mission, which will enable availability of water to the fields, villages, towns and industries throughout the year, even while maintaining environmental purity. One major part of the water mission would be networking of our rivers.”²

RE NETWORKING OF RIVERS

The ‘networking of rivers’ petition 512 of 2002³ was filed following the speech of the then President of India, Dr. A. P. J. Abdul Kalam suggesting inter-linking of rivers. Unmindful of his initial speech, where the President underlined that such programmes should have a large-scale people participation even at the conceptual and project planning stages, honorable former President who comes from Tamil Nadu never misses an opportunity to express his support for the networking of rivers project precluding any scope of participation in the decision making which entails rewriting the geography of the country.⁴

Petitions had been filed to issue an appropriate writ order or direction, more particularly a writ in nature of Mandamus directing Respondents i.e., Central Government as well State Governments to take appropriate action to nationalize all rivers in country, and also to take appropriate steps/action to inter link rivers in southern peninsula and to formulate a scheme whereby water from west flowing rivers could be channelized and equitably distributed.

It was held that, primarily there was unanimity between all concerned authorities including Centre and a majority of State Governments, with exception of one or two, that implementation of river linking would be very beneficial. There was no reason as to why Governments should not take appropriate and timely interest in execution of this project, particularly when, in various affidavits filed by Central and State Governments, it had been affirmed that governments were very keen to implement this project with great sincerity and effectiveness - Stand taken by respective States, showed that, by and large, there was unanimity in accepting interlinking of rivers but reservations of these States could also not

² Dr. A.P.J Abdul Kalam’s, Speech on eve of Independence Day dated 14-8-2002

³ MANU/SC/0155/2012

⁴ Inter Linking of Rivers in India: An Overview, Indus Research Centre, April 17, 2015

be ignored, being relatable to their particular economic, geographical and socio-economic needs - These were matters which squarely fell within domain of general consensus and thus, required a framework to be formulated by competent Government or Legislature, as case may be, prior to its execution - Relative economic and social needs of interested states, volume of stream and its uses, land not watered were other relevant considerations.

Thus, it would be for expert bodies alone to examine on such issues and their impact on project. National interest must take precedence over interest of individual States - State Governments were expected to view national problems with a greater objectivity, rationality and spirit of service to nation and ill-founded objections might result in greater harm, not only to neighbouring States but also to nation at large.

Under constitutional scheme, there was a clear demarcation of fields of operation and jurisdiction between Legislature, Judiciary and Executive. Legislature might save unto itself power to make certain specific legislations not only governing a field of its legislative competence as provided in 7th Schedule of Constitution, but also regarding a particular dispute referable to one of Articles itself. Article 262 of Constitution was one of “such powers, under this Article, Parliament, by law, could provide for adjudication of any dispute or complaint with respect to use, distribution and control of water of any inter-state river or river valley. Parliament could reserve to itself, power to oust jurisdiction of Courts, including highest Court of land, in relation to a water dispute as stated under 262 of Constitution”, Jurisdiction of Court would be ousted only with regard to adjudication of dispute and not all matters incidental thereto.

Huge amounts of public money had been spent, at planning stage itself and it would be travesty of good governance and epitome of harm to public interest, if these projects were not carried forward with a sense of sincerity and a desire for its completion. In Section 11 of Inter-State Water Disputes Act, expression ‘use, distribution and control of water in any river’ were key words in determination of scope of power conferred on a Tribunal constituted under Section 3 of Act - If a matter fell outside scope of these three crucial words, then power of Section 11 of Act in ousting jurisdiction of Courts in respect of any water dispute, which was otherwise to be referred to Tribunal, would not have any manner of application. Test of maintainability of a legal action initiated by a State in a Court would thus be, whether issues raised therein were referable to a Tribunal for adjudication of manner of use, distribution and control of water. A greater element of mutuality and

consensus needed to be built between States and Centre on one hand, and States inter se on other. A Public Interest Litigation before the Court had to fall within contours of constitutional law, because no jurisdiction was wider than the Court's constitutional jurisdiction under Article 32 of Constitution. Court was not equipped to take expert decisions and they essentially should be left for Central Government and concerned State. Requirements in present case had different dimensions - Planning, acquisition, financing, pricing, civil construction, environmental issues involved were policy decisions affecting legislative competence and would squarely fall in domain of Government of States and Centre. Court itself would not be a very appropriate forum for planning and implementation of such a programme having wide national dimensions and ramifications. It would not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter linking of rivers program for benefit of nation as a whole. And hence Petition was disposed of.

INTER-LINKING OF RIVERS PROJECT

The Project that the Supreme Court and the President have enjoined the government of India to implement may well be the largest infrastructure project ever undertaken in the world, to transfer water from the surplus river basins to ease the water shortages in western and southern India while mitigating the impacts of recurrent floods in the Eastern India (NWDA 2006). It will build 30 links and some 3000 storages to connect 37 Himalayan and Peninsular rivers to form a gigantic South Asian water grid. The canals, planned to be 50 to 100 meters wide and more than 6 meters deep, would facilitate navigation. The estimates of key project variables still in the nature of back-of-the-envelope calculations suggest it will cost a staggering Rs 560,000 crore, handle 178 km³ of inter-basin water transfer/per year, build 12,500 km of canals, create 35 giga watts of hydropower capacity, add 35 million hectare to India's irrigated areas, and generate an unknown volume of navigation and fishery benefits⁵. Some 3700 MW would be required to lift water across major watershed ridges by up to 116 meters. Far from 2016, most observers agree that the Project may not be fully complete even by 2050. Yet if estimated, it should be viewed as a 50-100 year project.

- The former will transfer 33 Km³ water, and the latter will transfers 141 Km³ water through a combined network of 14,900 km long canals (NWDA 2006). The

⁵ Mohile 2003; Institution of Engineers 2003; GOI 2003)

Himalayan Component (HC), with 16 river links, has two sub-components: the first will transfer the surplus waters of the Ganga and Brahmaputra to the Mahanadi basin, for relayed thereon from Mahanadi to Godavari, Godavari to Krishna and Krishna to Pennar and Pennar to Cauvery basins.

- The second will transfer water from the eastern Ganga tributaries to benefit the western parts of the Ganga, and the Sabarmati river basins.
- Altogether, these transfers will mitigate the floods in the eastern parts of Ganga basin, and provide irrigation and water supplies to the western parts of the basin. The Himalayan Component needs several large dams in Bhutan and Nepal to store and transfer flood waters of the tributaries of the Ganga and Brahmaputra rivers, and within India to transfer the +-surplus waters of Mahanadi and Godavari rivers.⁶

The Peninsular component has 16 major canals with have four sub components:

- i. linking Mahanadi-Godavari-Krishna-Cauvery-Vaigai rivers;
- ii. linking west flowing rivers south of Tapi and North of Bombay;
- iii. linking Ken-Betwa and Parbati Kalisindh-Chambal rivers and
- iv. diverting of flows of some west flowing rivers to the eastern side.

The en-route irrigation under the peninsular component is expected to irrigate substantial area proposed under the NRLP, which fall in arid and semi-arid western and peninsular India. The total cost of the project too has three components: the Peninsular component will cost US\$ 23 billion (Rs 1,06,000 crore); the Himalayan component will cost US\$ 41 billion (Rs 1,85,000 crore); and the Hydroelectric component will cost US\$ 59 billion (Rs 2,69,000 crore). The quantity of water diverted in the peninsular component will be 141 cubic kilometers and in the Himalayan component 33 cubic kilometers. The total power generated will be 34 GW - 4 GW in the peninsular component and 30 GW in the Himalayan component.⁷ The majority observers agree that the project would not be over by year 2050.

⁶ <https://youtu.be/U6HSSa5Q9zA>- Interlinking of rivers (ILR)- Part 1

⁷ (Rath 2003)

PROVISIONS REGARDING INTERSTATE WATER DISPUTES

The Prime Minister has said, “*Rivers are a shared heritage of our country....they should be the strings that unite us, not the strings that divide us.*”⁸ However, water conflicts now divide every segment of our society: political parties, states, regions, sub-regions within states, districts, castes, groups and individual farmers. Water conflicts, not water, seem to be percolating faster to the grassroots level in India.⁹

Constitutional Provisions

The Constitution lays down the legislative and functional jurisdiction of the Union, State and Local Governments in respect of water. Water is essentially a State subject and the Union comes in only in the case of inter-State waters.

- List II of the Seventh Schedule, dealing with subjects in respect of which States have jurisdiction has entry 17 which reads: 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;
- Entry 56 of List I (Union List), reads: Regulation and development of inter-state 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 the expedient in the public interest.

The Constitution contains a specific Article –

Article 262: This deals with adjudication of disputes relating to matters of inter-state rivers or river valleys that reads:

- 1) Parliament may by law provide for the adjudication on any dispute or complaint with respect to the use, distribution or control of water of, or in, any inter-state river or river valley.

⁸ Prime Minister's speech at the Inauguration of the National Conference of Irrigation and Water Resources Ministers, November 30, 2005.

⁹ Biksham Gujja, K J Jay, Suhas Paranjpe, Vinod Goud and Shruti Vispute, “Million Revolts in the Making”, Economic and Political Weekly, February 18, 2006

- 2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause(1).

The two laws enacted under Article 262 and entry 56 of List I are the River Boards Act, 1956 and the Inter-State Water Disputes Act, 1956. The River Boards Act was enacted with the objective of enabling the Union Government to create, in consultation with the State Governments, boards to advise on the integrated development of inter-State basins.

Inter-State Water Disputes Act, 1956

The genesis of the Inter-State River Water Disputes Act, 1956 lies in the Government of India Act, 1935. This act had been passed in pursuance of Article 262 of the Constitution. However, in a purely legal sense, water Tribunals owe their existence to the decision of the framers of the Indian constitution to make water the responsibility of state governments. When distributing subjects according to whether they should be dealt with by the states, the union or concurrently by both, water was placed on the state list.¹⁰

The act gives the meaning of water disputes and provides for complaints regarding water disputes from various states to Central government. It also provides for the adjudication of disputes relating to waters of Inter-State Rivers and River Valleys. The act enables setting up of tribunals to settle disputes on Inter-State water or river when the Central government is of the view that the matter cannot be solved by negotiations. It had been recommended by The Sarkaria Commission to set up a Tribunal within one year of complaint by the State Government and to declare its decision within five years.

The Inter-State Water Disputes Act was amended in 2002 and the following important changes were made:

- Government of India to establish a Tribunal within one year on a request by a State Government.
- The Tribunal to investigate the matters referred to it and give its Report within a period of three years (Government of India may extend the period by another two years).

¹⁰ Pani N, The Place Of The Tribunal In Inter-State Water Dispute, Vol. 2 Issue 1.

- The decision of the Tribunal, after its publication in the Official Gazette by the Central Government, shall have the same force as an order or decree of the Supreme Court.

River Boards Act, 1956

In pursuance of the power provided under Entry 56 of List I, the Parliament passed the River Boards Act in the year 1956. This Act is the only instance when the Parliament has used its power allowed to it under Entry 56. The board was mainly having two functions,

1. to ensure proper and optimum utilization of the water resources of the inter-state rivers and
2. To monitor different schemes of irrigation, water supply, hydroelectricity power generation.

However the nature of work of the board is advisory in nature and is meant only for the purpose to give advice and suggestions. Therefore the act has been rendered as a dead letter by not appointing River Boards¹¹. Thus the act had not been effective and one of the major causes for this is that Entry 56 confers a vast and unfettered power on the Union, which, in conjunction with its large resources, enables it to encroach upon an area which is within the jurisdiction of the States¹². There are River Boards set up under separate legislation, but these were set up to implement a mutually agreed sharing agreement between States, e.g. Upper Yamuna River Board, Betwa River Board. River Boards cannot be set up to monitor the working and functioning of Tribunal awards.

The new enactment should clearly define the constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants. While enacting the legislation, national interest should be the paramount consideration as inter-State rivers are 'material resources' of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.

¹¹ D.D.Basu, Commentary on the Constitution of India, 8th Ed, pg 9113

¹² Sarkaria Commission Report (1988), Chapter XVII, para 17.4.01

According to, Prime Minister's speech at the Inauguration of the National Conference of Irrigation and Water Resources Ministers, November 30, 2005;¹³ The River Boards were supposed to prevent conflicts by preparing developmental schemes and working out the costs to each State. No water board, however, has so far been created under the River Boards Act, 1956.

Jurisdiction of Court

Over the years, several inter-State river water disputes have come up before the Supreme Court with reference to a variety of issues such as the competence of the Tribunal to deal with a request for an interim allocation (Cauvery); the non-implementation of an Order of the Tribunal (Cauvery); failures on the environmental and rehabilitation fronts (Narmada); the constitutionality of an Act of a State Legislature terminating all past water accords (Punjab);¹⁴ etc. In each of these cases, what went before the Supreme Court was not the water-sharing issue, which had been adjudicated or was under adjudication by a Tribunal, but some other related legal or constitutional issue.¹⁵

Analyzing the decision of the Supreme Court in inter-state water disputes, it can be seen that Supreme Court point to a constitutive tension between "we the people" and "sovereign socialist secular democratic republic" of India.¹⁶ It is important to understand and reflect on the tension before quick and ready prescriptions are given out to inter-state water conflicts. Inter-state disputes over water are of two types. One type of dispute relates to the rights of states and scope of their rights within the Union. With the exception of reopening the terms of unification, the states may apply to the Supreme Court to resolve questions of rights flowing from the constitution¹⁷ Inter-state rivers; on the other hand do not involve questions of rights flowing from the constitution itself.

The Cauvery Case

The main issue of the Cauvery dispute case is related to the re-sharing of waters that are already being fully utilized. The Cauvery cases are important because first, they paved the

¹³ Biksham Gujja, K J Jay, Suhas Paranjpe, Vinod Goud and Shruti Vispute, *Million Revolts in the Making*, Economic and Political Weekly, February 18, 2006

¹⁴ Sainath P., Little Pani, Less Panchayat (2002), The Hindu, 15 and 22 September

¹⁵ The Supreme court and river water disputes, Ramaswamy R. Iyer, The hindu , 17/09/12

¹⁶ Petrella, R. The Water Manifesto, London: Zed Books, and Bangalore: Books for change

¹⁷ The Constitution Of India, Article 131

way for the involvement of the Supreme Court in inter-state water disputes, and without a constitutional mandate to do so the Supreme Court could not play an effective role. It is claimed by the Karnataka Government, the state does not get its due share of water and because of this reason the state is of the opinion to re-enact the agreement which should be based on “equitable sharing”. Contrary to this, Tamil Nadu government contends that since it had already developed plans in furtherance of the agreement and any change in the agreement pattern will greatly affect the many. The agreement rejects the Original jurisdiction of the Supreme Court under Article 131 of the Constitution of India. However, the question before the court is the implementation of the Tribunal’s Interim Order, and the related issue of compliance with the decisions of the Cauvery River Authority and with the directions of the Supreme Court¹⁸ itself which is entirely within the Supreme Court’s jurisdiction.

In the year 1990, a tribunal was finally constituted by an order of the Supreme Court. Soon Tribunal passed an interim order in June 1991. State of Karnataka was directed not to increase its area of irrigation from the Cauvery waters and also let the water flow of certain meters allowed.

In 2007, final award was given by the tribunal after holding many discussion and debates for almost 17 years to all the States accordingly as required. In pursuance of the 2007 award, Cauvery Water (Implementation of the Order of 2007) Scheme, 2013 a temporary body was introduced by the government. The body is given the responsibility of implementation of the decision of the Cauvery Water Dispute Tribunal. However, the order is yet to be implemented as a Special Leave Petition on the matter remains pending in the Supreme Court.

Does Article 262 of the Constitution get affected?

The Provision under Article 262 seems to be insufficient. It would have been better if machinery had been written into the Constitution itself. Then it would not be left to the Parliament to provide machinery. 5 years passed before the Inter-State Water Disputes Act was passed in 1956. Article 262 grants power to make a law; it does not impose a duty, for no court can issue a mandamus to the legislature to make a law¹⁹. Also no provision of the Constitution can be held ultra-vires, but any law, or part of law made under Article 262 can be held ultra-vires.

¹⁸ Cauvery Dispute: An Instance of Judicial Fallacy, Mr. Naresh Pareek, Manupatra.

¹⁹ Seervai H.M., Constitutional Law of India, Vol.3 (4th Edition) pp. 3243

Also there are always inordinate delays in the setting up of tribunals and deciding the award. The right to have a dispute referred to a tribunal under IWSDA is dependent on the opinion of the Central Government that the matter cannot be settled by negotiations.²⁰

CONCLUSION

Networking Rivers does not mean drawing some mega litres from one river and pouring it into another like one does with static containers, or even with canals. The ramifications are much wider because a river is not only the water that flows or the channel, which holds the flow rather it's much more. The river is the dynamic face of the landscape. *"In the drama of history, the ecosystem is not the stage setting; it is the cast."* In the past the court has rightly and consistently held that large infrastructure projects invariably raise technical and policy issues which the courts are not equipped to handle. In view of the reasons cited above and especially an evolving international law on Transboundary River there is a clear case for the apex court to review its order on 'networking rivers'.

In the days, months and years ahead it is likely to reveal Indian Government's exact policy vis-à-vis networking of rivers and court's considered response while dealing with contempt applications in the face of sub continental protest. This case is likely to give birth to a new international legal order to safeguard the legitimate regime of river basins from the obsolete notions of 'conquest over nature', 'surplus' rivers and taming rivers. If the environmental movement in the Indian sub-continent fails to stop this mega project, it would mean nothing short of a premature death of the movement itself and acceptance of the proposed rewriting of sub-continent's geography with painful consequences as fait accompli.

As per National Water Policy, 2002, "Water resources development and management will have to be planned for a hydrological unit such as drainage basin as a whole or for a sub-basin, multi-sectorally, taking into account surface and ground water for sustainable use incorporating quantity and quality aspects as well as environmental considerations."²¹ Outlining India's National Water Policy in 2002, the then Prime Minister Atal Bihari Vajpayee said that the policy should be people-centered and those communities ought to be

²⁰ The Inter-State Water Disputes Act, Section 4(1)

²¹ National Water Policy (2002), Ministry of Water Resources, Government of India, <http://wrmin.nic.in/policy/default4.htm>

recognized as the ‘rightful custodians of water’.²² This clearly shows that networking of river is contrary to the Government’s stated policy which means vested interests are so powerful that they can subvert both executive’s and judiciary’s role.

²² Francois M. Farah (October 23, 2003), UNFPA Representative, UNFPA Water and Sanitation Report