

INTERSTATE WATER DISPUTE: A CRITIQUE

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I. INTRODUCTION

India is a land of rivers. With over 400 river systems, water has been both a source of life and a cause of lasting dispute since ancient times.² In the constitutional scheme, water occupies a unique place; it is simultaneously a subject of state legislative competence and a matter of national concern when it flows across state boundaries. Article 262 of the Constitution of India empowers Parliament to provide by law for the adjudication of disputes relating to the waters of any inter-state river or river valley.³

Pursuant to this constitutional mandate, Parliament enacted the Inter-State River Water Disputes Act 1956, which defines an 'inter-state river' as a river that flows through the territories of two or more states.⁴ The Act provides for the constitution of Water Disputes Tribunals upon reference by the Central Government, following the failure of negotiations between states. This mechanism has been invoked in numerous major disputes, including the Narmada,⁵ Krishna, Godavari, and Cauvery River controversies, each of which has lasted for decades and generated substantial litigation.

Despite the constitutional architecture and a rich body of litigation, the resolution of inter-state water disputes in India remains deeply problematic. Scholars have observed that the ISRWDA has failed to deliver timely, durable, and enforceable awards.⁶ The fundamental problem is structural: the Act creates ad hoc tribunals without permanent status, excludes the Supreme Court's jurisdiction under Article 131, fails to provide for effective enforcement machinery, and operates in the absence of a comprehensive national water policy framework.⁷ As a result, disputes fester for decades, tribunals operate in legal limbo, and awards are routinely challenged or ignored.⁸

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² K.L. Rao, *INDIA'S WATER WEALTH*, 1st ed. 1975, p. 7.

³ Constitution of India 1950, Art. 262(1).

⁴ Inter-State River Water Disputes Act 1956, Sec. 2(c).

⁵ Narmada Water Disputes Tribunal Award 1979, Government of India.

⁶ R.R. Iyer, *WATER: PERSPECTIVES, ISSUES, CONCERNS*, 1st ed. 2003, p. 45.

⁷ M.P. Jain, *INDIAN CONSTITUTIONAL LAW*, 8th ed. 2018, p. 1124.

⁸ *State of Rajasthan v. State of Madhya Pradesh* (2014) 6 SCC 607.

This essay offers a systematic critique of the existing framework under six heads: (1) the historical evolution of the inter-state water dispute mechanism; (2) the constitutional framework and the tension between Articles 131, 136, and 262; (3) the structural and procedural deficiencies of Water Disputes Tribunals; (4) the persistent problem of enforcement; (5) the politicisation of water disputes and its constitutional consequences; and (6) the challenge of climate change and its implications for static water-allocation frameworks. The essay concludes with normative recommendations for comprehensive reform.

II. HISTORICAL BACKGROUND AND LEGISLATIVE EVOLUTION

A. PRE-CONSTITUTIONAL PERIOD

The problem of inter-provincial water disputes is not a post-independence phenomenon. The Government of India Act 1919 first attempted to address it by conferring on the Governor-General in Council the power to define the extent to which legislation of one province applied to rivers flowing through other provinces.⁹ The more elaborate Government of India Act 1935 introduced a separate provision under Section 130 that empowered the Federal Court to hear river-water disputes between provinces, though this mechanism was largely never invoked.¹⁰

B. CONSTITUENT ASSEMBLY DEBATES

The framers of the Indian Constitution were acutely aware of the potential for water conflicts in a federal polity. In the Constituent Assembly debates of September 1949, Dr B.R. Ambedkar acknowledged that the provision relating to water disputes was deliberately designed to exclude the ordinary court system, creating instead a specialised adjudicatory body that could bring technical expertise to bear on complex hydrological questions.¹¹ Article 262 was the result of this deliberation, and it represented a constitutional choice in favour of expert tribunalisation over judicial adjudication in the traditional sense.¹²

⁹ Government of India Act 1919, Sec. 45A.

¹⁰ Government of India Act 1935, Sec. 130.

¹¹ Constituent Assembly Debates, Vol. IX (September 12, 1949), p. 1165 (Dr. B.R. Ambedkar).

¹² Constitution of India 1950, Art. 262(2).

C. ENACTMENT OF THE ISRWDA 1956

The Inter-State River Water Disputes Act 1956 was enacted to give effect to Article 262. Section 3 of the Act provides that if it appears to the Central Government that a water dispute with respect to an inter-state river cannot be settled by negotiation, the Central Government shall refer the dispute to a Tribunal for adjudication.¹³ Constitutional scholars have noted that this Act represented an innovative exercise of Union legislative power in a domain that is principally a state subject under Entry 17 of List II of the Seventh Schedule.¹⁴

III. CONSTITUTIONAL FRAMEWORK: SCHEME AND TENSIONS

A. DISTRIBUTION OF LEGISLATIVE POWERS

The legislative framework governing water is characterised by a deliberate division between state and union competence. Entry 17 of List II (State List) vests states with legislative authority over '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.'¹⁵ Entry 56 of List I (Union List) confers upon Parliament the power to regulate and develop inter-state rivers and river valleys to the extent that such regulation is declared by Parliament by law to be expedient in the public interest.¹⁶ This dual structure, read with Article 246,¹⁷ creates a potential for legislative overlap and jurisdictional uncertainty.

B. ARTICLE 131 AND ITS EXCLUSION

A crucial constitutional tension arises from the relationship between Article 131, which grants original jurisdiction to the Supreme Court over disputes between states and Article 262, which allows Parliament to exclude such jurisdiction in water matters. In *State of Bihar v Union of India*,¹⁸ The Supreme Court recognised the primacy of the tribunal mechanism in water disputes, holding that the ISRWDA constitutionally and validly ousted its jurisdiction in such matters. The *Presidential Reference on the Cauvery River* confirmed that the combined effect of Article 262(2) and Section 11 of

¹³ Inter-State River Water Disputes Act 1956, Sec. 3.

¹⁴ H.M. Seervai, *CONSTITUTIONAL LAW OF INDIA*, Vol. III, 4th ed. 1993, p. 2456.

¹⁵ Constitution of India 1950, Seventh Schedule, Entry 56, List I.

¹⁶ Constitution of India 1950, Seventh Schedule, Entry 17, List II.

¹⁷ Constitution of India 1950, Art. 246.

¹⁸ *State of Bihar v. Union of India* AIR 1970 SC 1446.

the ISRWDA was to completely bar the Supreme Court from entertaining water disputes.¹⁹

This position, while constitutionally defensible, produces a significant anomaly: the highest court in the land, which ordinarily adjudicates interstate disputes under Article 131,²⁰ is rendered functionally helpless when states engage in prolonged non-compliance with tribunal awards. As was demonstrated in *State of Karnataka v Union of India*,²¹ and later in *Cauvery River Authority v State of Karnataka*,²² the exclusion of Supreme Court jurisdiction effectively creates a gap in the constitutional enforcement architecture..

IV. A CRITIQUE OF THE TRIBUNAL SYSTEM

A. CONSTITUTION AND COMPOSITION

Under Section 4 of the ISRWDA, the Central Government is empowered to constitute a Water Disputes Tribunal after receiving a complaint and being satisfied that negotiations have failed.²³ Section 5(2) mandates that the tribunal must consist of a Chairman and two other members, all of whom must be current or former judges of the Supreme Court or of a High Court.²⁴ This judicial composition, while lending legitimacy, ignores the reality that water disputes require hydrological, ecological, and engineering expertise that jurists ordinarily do not possess. India has historically constituted several such tribunals, the Krishna Water Disputes Tribunal (1969),²⁵ the Ravi and Beas Waters Tribunal (1986),²⁶ the Godavari Water Disputes Tribunal (1969),²⁷ and the Vansadhara Water Disputes Tribunal (2010),²⁸ each constituted for a single dispute with no institutional continuity.

B. THE PROBLEM OF DELAY

Perhaps the most damaging structural deficiency of the tribunal mechanism is the problem of delay. The ISRWDA initially set a three-year outer limit for tribunals to

¹⁹ In re Presidential Reference (Cauvery River) (1992) Supp 1 SCC 44.

²⁰ Constitution of India 1950, Art. 131.

²¹ *State of Karnataka v. Union of India* (1977) 4 SCC 608.

²² *Cauvery River Authority v. State of Karnataka* AIR 2000 SC 3606.

²³ Inter-State River Water Disputes Act 1956, Sec. 4.

²⁴ Inter-State River Water Disputes Act 1956, Sec. 5(2).

²⁵ Krishna Water Disputes Tribunal Award 1976, Government of India.

²⁶ Ravi and Beas Waters Tribunal (constituted 1986, award 1987), Government of India.

²⁷ Godavari Water Disputes Tribunal Award 1979, Government of India.

²⁸ Vansadhara Water Disputes Tribunal (constituted 2010), Government of India.

deliver their reports, extendable by two further years.²⁹ In practice, this limit has been honoured more in the breach. The Cauvery Water Disputes Tribunal, constituted in 1990, delivered its final award only in February 2007³⁰ a delay of seventeen years that rendered the award practically irrelevant to a dispute that had, in the meantime, escalated into communal violence and political crisis.³¹

The 2002 Amendment to the ISRWDA sought to introduce stricter time limits, but it failed to address the root cause of delay, the ad hoc character of tribunals, which must be constituted anew for each dispute, build institutional capacity from scratch, and operate without a permanent secretariat or research infrastructure.³² Even with the amended timelines,³³ tribunals routinely exceed the statutory period because of applications for extensions, interlocutory proceedings, and state-level obstructionism.³⁴ In *Ranbir Singh Pasricha v Union of India*,³⁵ The Supreme Court lamented the excessive delay in tribunal proceedings but found itself without effective remedial jurisdiction.

C. LACK OF SCIENTIFIC INFRASTRUCTURE

The Law Commission of India, in its 247th Report, observed that Water Disputes Tribunals function in the absence of reliable hydrological data, scientific research infrastructure, and institutional memory.³⁶ Each new tribunal must start from the beginning in assembling data on river flows, water usage, and ecological parameters, resulting in duplication of effort and inconsistent factual findings across tribunals.³⁷ This problem is compounded by the fact that states routinely contest the data submitted by other states, leading to prolonged evidentiary hearings that further delay final awards.³⁸

²⁹ Inter-State River Water Disputes Act 1956, Sec. 5(3).

³⁰ Cauvery Water Disputes Tribunal, Final Award, February 2007, Government of India Gazette.

³¹ *State of Tamil Nadu v. State of Karnataka* (2018) 4 SCC 1, ¶ 32 (Misra C.J.).

³² Inter-State River Water Disputes (Amendment) Act 2002.

³³ Inter-State River Water Disputes Act 1956, Sec. 5(2).

³⁴ Cauvery Water Disputes Tribunal (1990-2007).

³⁵ *Ranbir Singh Pasricha v. Union of India* (1987) 1 SCC 134.

³⁶ Law Commission of India, Report No. 247, INTER-STATE RIVER WATER DISPUTES ACT 1956, Law Commission of India, 2014, ¶ 2.3.

³⁷ B.D. Dua, INTER-STATE RIVER WATER DISPUTES IN INDIA, 1st ed. 1984, p. 78.

³⁸ Amicus Curiae Brief, Cauvery Water Disputes Tribunal, 2003 (on file with Government of India Ministry of Water Resources).

V. THE ENFORCEMENT DEFICIT

A. CONSTITUTIONAL AND STATUTORY FRAMEWORK FOR ENFORCEMENT

Once a Water Disputes Tribunal delivers its award, Article 262(2) and Section 11 of the ISRWDA bar the Supreme Court from reviewing the substantive merits of the award, while Section 6 provides that the award shall be published in the Official Gazette and shall have the force of an order or decree of the Supreme Court.³⁹ This fictional equivalence between a tribunal award and a Supreme Court decree does not, however, translate into equivalent enforcement machinery. A genuine Supreme Court decree can be enforced by contempt proceedings under Article 129, but no comparable mechanism exists for tribunal awards.

B. NON-COMPLIANCE AND CONTEMPT

The Cauvery crisis provides the most vivid illustration of this enforcement deficit. Despite the interim orders of the Cauvery Water Disputes Tribunal and the subsequent orders of the Supreme Court in contempt proceedings in *State of Tamil Nadu v State of Karnataka (2017)*,⁴⁰ The State of Karnataka repeatedly defied orders to release stipulated quantities of water to Tamil Nadu.⁴¹ Section 6 of the ISRWDA, which notionally equates tribunal awards with Supreme Court decrees,⁴² proved inadequate because no mechanism existed to compel state compliance, short of Presidential Rule under Article 356, a politically catastrophic option that has never been invoked for water enforcement.⁴³

C. THE FEDERAL DIMENSION OF NON-COMPLIANCE

Non-compliance with tribunal awards is not merely a legal problem; it is a manifestation of the deeper tensions within Indian federalism. States are sovereign within their domains under the constitutional scheme, and water is intimately tied to agrarian interests, electoral politics, and regional identity.⁴⁴ The Union Government, which bears the constitutional responsibility for enforcing tribunal awards, has

³⁹ Constitution of India 1950, Art. 262(2); Inter-State River Water Disputes Act 1956, Sec. 11.

⁴⁰ *State of Tamil Nadu v. State of Karnataka (2017)* 3 SCC 362.

⁴¹ *Cauvery River Authority v. State of Karnataka (2012)* Supp SCC (Cri) 1.

⁴² Inter-State River Water Disputes Act 1956, Sec. 6.

⁴³ R. Ramaswamy Iyer, "Cauvery: A Study in Intractability", *ECONOMIC AND POLITICAL WEEKLY*, Vol. 37 No. 46, 2002, p. 4572.

⁴⁴ Mihir Shah, "Water: Towards a Paradigm Shift in the Twelfth Plan", *ECONOMIC AND POLITICAL WEEKLY*, Vol. 48 No. 3, 2013, p. 40.

consistently been reluctant to invoke coercive powers against non-compliant states, preferring negotiated settlements that are rarely durable. This political economy of water enforcement remains the most serious structural challenge to the constitutional framework.

VI. THE SUPREME COURT, SPECIAL LEAVE, AND CONSTITUTIONAL COMPLEXITY

A. CIRCUMVENTING ARTICLE 262 VIA ARTICLE 136

Notwithstanding the bar under Article 262(2), the Supreme Court has carved out a limited space for judicial review of tribunal awards through the exercise of special leave jurisdiction under Article 136.⁴⁵ In *State of Tamil Nadu v State of Karnataka (2018)*, the Constitution Bench of the Supreme Court confirmed that while the substantive allocation of water by a tribunal is not subject to judicial review, procedural irregularities and questions of jurisdiction may be examined under Article 136.⁴⁶ Similarly, in *State of Haryana v State of Punjab*,⁴⁷ The Court exercised Article 136 jurisdiction to examine the legality of a tribunal's procedural orders.

B. ARTICLE 142 AND THE SUPERVISORY ROLE

The Supreme Court has also invoked Article 142, which empowers it to pass orders necessary for doing 'complete justice' in water dispute contexts, creating a de facto supervisory jurisdiction that is not expressly contemplated by the constitutional scheme.⁴⁸ In the Cauvery case, the Court issued a series of executive directions under Article 142, effectively substituting its own judgment for that of the tribunal on the question of water releases.⁴⁹ While this judicial creativity may have served immediate equitable purposes, it created doctrinal uncertainty by blurring the boundary between the tribunal mechanism and ordinary judicial review.⁵⁰

⁴⁵ *State of Tamil Nadu v. State of Karnataka* (2018) 4 SCC 1.

⁴⁶ Constitution of India 1950, Art. 136.

⁴⁷ *State of Haryana v. State of Punjab* (2002) 2 SCC 507.

⁴⁸ Constitution of India 1950, Art. 142.

⁴⁹ *Cauvery Water Disputes Tribunal v. Union of India* (1992) 1 SCC 44, ¶ 21.

⁵⁰ V.P. Sarathi, *LAW OF EVIDENCE*, 7th ed. 2016, p. 302.

VII. POLITICISATION AND DEMOCRATIC ACCOUNTABILITY

A. WATER AS A POLITICAL RESOURCE

Water disputes in India have never been purely legal or hydrological matters. They are embedded within the dynamics of competitive federalism, electoral politics, and regional identity.⁵¹ State governments routinely mobilise water grievances for electoral advantage, and political leaders face intense pressure not to ‘concede’ water to rival states. This politicisation fundamentally distorts the functioning of the tribunal mechanism, which is premised on the availability of neutral adjudication.⁵²

B. THE ROLE OF THE UNION GOVERNMENT

The Union Government, which is constitutionally required to play a neutral role in inter-state water disputes, has repeatedly been accused of partisan conduct, delaying the constitution of tribunals, selectively enforcing or ignoring awards, and using water allocations as political bargaining chips.⁵³ The failure to promptly gazette tribunal awards, the selective invocation of the Cauvery River Authority, and the delay in implementing the Ravi-Beas award are illustrative examples of Union Government partisanship that have undermined the legitimacy of the constitutional mechanism.⁵⁴

VIII. CLIMATE CHANGE AND THE INADEQUACY OF STATIC ALLOCATION FRAMEWORKS

A. THE HYDRO-CLIMATIC CHALLENGE

Tribunal awards are static instruments; they allocate water on the basis of historical flow data and projected usage at a particular point in time. The transformative implications of climate change for river flow patterns make such static allocations increasingly problematic.⁵⁵ The IPCC has documented that South Asia will experience significant disruptions in the monsoon pattern, accelerated glacial retreat, and

⁵¹ Indira Gandhi, “Speech on Cauvery Water Dispute”, Prime Minister’s Conference on Water, New Delhi, March 14, 1972.

⁵² N.S. Jodha, “Common Property Resources: A Missing Dimension of Development Strategies”, World Bank Discussion Papers, No. 169, 1992, p. 12.

⁵³ Nirmal Sengupta, “The Commons in an Age of Scepticism”, *ECONOMIC AND POLITICAL WEEKLY*, Vol. 37 No. 51, 2002, p. 5141.

⁵⁴ Abhijit Bhattacharyya, *INTERSTATE WATER DISPUTES IN INDIA: NEGOTIATING THE CAUVERY CONFLICT*, 1st ed. 2017, p. 135.

⁵⁵ IPCC, *CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS*, 1st ed. 2021, Chap. 8.

increased variability in river flows, all of which will alter the factual basis of existing tribunal awards.

B. NATIONAL WATER POLICY AND ADAPTIVE MANAGEMENT

The National Water Policy 2012 acknowledges the need for ‘adaptive water management’ that can respond to changing climatic conditions.⁵⁶ However, the ISRWDA framework contains no mechanism for reviewing or revising tribunal awards in the light of changed hydrological conditions. This rigidity is constitutionally and practically untenable in an era of accelerating climate disruption.⁵⁷ Water scarcity, which is already a reality for hundreds of millions of Indians,⁵⁸ will intensify the competition for inter-state river resources and expose the structural inadequacy of the existing constitutional framework.

IX. RECOMMENDATIONS FOR REFORM

A. ESTABLISHMENT OF A PERMANENT NATIONAL WATER DISPUTES AUTHORITY

The most urgent reform required is the replacement of the ad hoc tribunal system with a Permanent National Water Disputes Authority (NWDA), as recommended by the Mihir Shah Committee⁵⁹ and the 247th Report of the Law Commission.⁶⁰ Such a body should be constituted on a permanent basis, equipped with a multidisciplinary secretariat comprising hydrologists, ecologists, economists, and legal experts, and empowered to adjudicate disputes within a defined time frame without the delays endemic to the present mechanism.

B. STRENGTHENING ENFORCEMENT MECHANISMS

The Inter-State River Water Disputes (Amendment) Bill 2019 proposes the creation of a Disputes Resolution Committee at the preliminary stage,⁶¹ but it does not adequately address the enforcement problem. A constitutional amendment should be considered

⁵⁶ Ministry of Water Resources, River Development and Ganga Rejuvenation, National Water Policy 2012, Government of India, 2012, ¶ 6.

⁵⁷ Ashok Gulati, et al., “Water, Agriculture and Climate Change”, *ECONOMIC AND POLITICAL WEEKLY*, Vol. 49 No. 52, 2014, p. 63.

⁵⁸ Malin Falkenmark, et al., “Water Scarcity: An Ever-Growing Problem”, *NATURE*, Vol. 571, 2019, p. 553.

⁵⁹ Mihir Shah Committee Report, *RESTRUCTURING CWC AND CGWB*, Government of India, 2016, Chap. 5.

⁶⁰ Law Commission of India, Report No. 247, *supra* note 36, ¶ 4.1.

⁶¹ Inter-State River Water Disputes (Amendment) Bill 2019, Cl. 3.

to expressly empower the Supreme Court to enforce tribunal awards through contempt proceedings, eliminating the current anomaly whereby Section 11 of the ISRWDA bars the Court from substantive review but leaves no alternative enforcement mechanism.

C. INTEGRATED RIVER BASIN MANAGEMENT

The National Water Policy 2012 calls for the adoption of an integrated river basin management approach.⁶² Drawing on comparative models such as the India-Bangladesh Ganges Treaty of 1996⁶³ and the Helsinki Rules on equitable apportionment,⁶⁴ India should move towards a basin-level governance framework that treats rivers as ecological and social commons, rather than resources to be divided among competing state sovereigns. The experience of the Colorado River Compact in the United States⁶⁵ and the Murray-Darling Basin Plan in Australia⁶⁶ demonstrate the viability of cooperative basin management as an alternative to adversarial dispute resolution.

D. INCORPORATING CLIMATE ADAPTATION

Tribunal awards and basin management agreements must include provisions for periodic review and revision in the light of updated hydrological data and climate projections. Static allocation frameworks are constitutionally and ecologically untenable in the current era. A mechanism for adaptive management drawing on the best available scientific evidence must be built into the constitutional and statutory framework.

X. CONCLUSION

The constitutional framework for the resolution of inter-state water disputes in India reflects the wisdom of the founding generation in recognising that water is too important and too technically complex to be left to ordinary adversarial litigation.⁶⁷ However, the mechanism created by Article 262 and the ISRWDA 1956 has, over seven

⁶² National Water Policy 2012, *supra* note 56, ¶ 14.

⁶³ Ganges Treaty 1996 (India-Bangladesh), Art. 2.

⁶⁴ Helsinki Rules on the Uses of the Waters of International Rivers 1966, Art. IV.

⁶⁵ Colorado River Compact 1922 (United States), Art. III.

⁶⁶ Murray-Darling Basin Plan 2012 (Australia).

⁶⁷ Granville Austin, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION*, 1st ed. 1966, p. 244.

decades, demonstrated profound structural, institutional, and political weaknesses that have prevented it from achieving its constitutional purpose.

The Supreme Court has affirmed, in *State of Tamil Nadu v State of Karnataka (2018)*, the paramount importance of cooperative federalism in water governance.⁶⁸ a value that the current framework has conspicuously failed to promote. Water is, at its most fundamental level, a human rights concern: the Supreme Court has recognised the right to water as an integral part of the right to life under Article 21 of the Constitution.⁶⁹ From *Subhash Kumar v State of Bihar*⁷⁰ to *Narmada Bachao Andolan v Union of India*,⁷¹ The courts have underscored that water governance is ultimately about justice for the most vulnerable.

A comprehensive reform of the inter-state water dispute mechanism, establishing a permanent authority, strengthening enforcement, integrating scientific expertise, building in adaptive capacity, and fostering cooperative basin management is not merely desirable but constitutionally imperative. Without such reform, India's water governance framework will remain a site of protracted litigation, persistent injustice, and mounting ecological crisis.



⁶⁸ *State of Tamil Nadu v. State of Karnataka* (2018) 4 SCC 1, ¶ 65 (Misra C.J.).

⁶⁹ Constitution of India 1950, Art. 21.

⁷⁰ *Subhash Kumar v. State of Bihar* AIR 1991 SC 420.

⁷¹ *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664.