

# **Inter-State Water Disputes Act**

## **INDIA'S EXPERIENCE: Some Case Studies**

The Inter-State Water Disputes Act seems to provide fairly clear procedures for handling disputes. At the same time, however, the law permits considerable discretion, and different disputes have followed quite different paths to settlement, or in a few cases, continued disagreement. In this section, what is provided is an overview, and then some detailed discussion of some of the major disputes.

### **Overview**

The central government has given substantial attention to water disputes, which began to emerge soon after the framing of the Constitution. As far back as 1967, the following 15 cases were identified<sup>1</sup>, divided into two groups.

The first group was those cases where interstate agreements through mutual discussions and negotiations had been successfully reached:

1. Musakhand Project dispute between Uttar Pradesh and Bihar, settled in 1964.
2. Tungabhadra Project High-level canal dispute between Karnataka and Andhra Pradesh, settled in 1956.
3. Sharing of costs and benefits of Jamni Dam Project between Uttar Pradesh and Madhya Pradesh, settled in 1965.
4. Palar water dispute between Tamil Nadu and Karnataka, settled in 1956.
5. Sharing of Subarnarekha river water among Bihar, Orissa and West Bengal, settled in 1964.
6. Exploitation of Mahi river water between Gujarat and Rajasthan, settled in 1966.
7. Utilization of Ravi-Beas waters between Punjab, Rajasthan, Jammu and Kashmir, settled in 1965.

A careful examination of the above list suggests some common features of the easily settled disputes. The first three involved sharing costs and benefits of specific projects. While the latter three involved relatively specific disputes over smaller rivers, mostly over well-defined projects or project proposals. Thus specificity and well-defined technical and cost issues characterized six of the seven settlements. The one "settlement" that does not fit this characterization, regarding the seventh case on the above list, was reopened with the division of Punjab into Punjab and

Haryana in 1966, and this new dispute has still not been resolved. In fact, it has been one of the most contentious of inter-state water disputes. Details of the same are mentioned in a separate section.

The second group discussed consists of those cases, which had not been settled at that time:<sup>2</sup>

1. The Krishna - Godavari waters dispute among Maharashtra, Karnataka, Andhra Pradesh and Orissa.
2. The Cauvery water dispute among Tamil Nadu, Karnataka and Kerala.
3. The Narmada water dispute among Gujarat, MP, Maharashtra and Rajasthan.
4. The Tungabhadra project issues other than the high level canal between Karnataka and Andhra Pradesh.
5. The issue of extension of irrigation from the Rangwan Dam of UP between UP and MP.
6. The Koymani river dispute between Bihar and West Bengal.
7. The dispute over the Keolari Nadi waters between MP and UP.
8. The Bandar Canal project, affecting Madhya Pradesh and Uttar Pradesh.

A study of the details of these cases clearly puts them in two groups. The first three on this list were or are major disputes, involving large river basins. They were all ultimately referred to tribunals, with varying degrees of success. The last five cases on the list are actually closer in characteristics (relatively small and specific) to the most of the cases on the first list.

### **Cases**

Three cases are discussed below in detail, which involve important disputes, and illustrate well the variety of paths that disputes can take in the Indian institutional context.

- a) The Krishna-Godavari water dispute
- b) The Cauvery water dispute
- c) The Ravi-Beas water dispute

In the first case, relative success was achieved through negotiations and through the working of a tribunal. In the other two cases, the institutional process has been relatively less successful: while these two disputes have both gone to tribunals, neither one has yet been successfully resolved. The Cauvery Tribunal is still deliberating, while the Ravi-Beas Tribunal gave its judgment, but it was not made official by the central government.

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<sup>1</sup> Administrative Reforms Commission (1967-68), Volume II, pp. 126-134

<sup>2</sup> Ibid

### **KRISHNA-GODAVARI WATER DISPUTE<sup>3</sup>**

The Krishna-Godavari water dispute among Maharashtra, Karnataka, Andhra Pradesh (AP), Madhya Pradesh (MP), and Orissa could not be resolved in spite of negotiations and discussions. Here Karnataka and Andhra Pradesh are the lower riparian states on the river Krishna and Maharashtra is the upper riparian state. The dispute was mainly about the interstate utilization of untapped surplus water.

#### **Background of the dispute**

In the early 1950s, the Indian government adopted the First Five Year Plan, which outlined a path for economic development. The Planning Commission wanted to include some major schemes for irrigation and hydroelectric power on the rivers Krishna and Godavari.

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

The **main issues** in the Krishna-Godavari dispute were the following:

- (1) The validity of the inter-state agreement of 1951 was questioned. Since the objective conditions had changed since 1951, Maharashtra, Orissa, Karnataka, MP demanded a new consideration of the allocation of the water of the two states.
- (2) Karnataka and AP objected to the diversion of more water at Koyna by the upper riparian state, Maharashtra, for a hydroelectric project and other irrigation work, as this would reduce downstream flow, with adverse consequences for agriculture and industry.
- (3) Andhra Pradesh also objected to the construction of dams by the upper riparian state, Maharashtra, for irrigation purposes.
- (4) It was questioned whether Maharashtra could divert water westward for generating cheap hydroelectric power on the slopes of the Western Ghats.
- (5) The upper riparian state also questioned Andhra Pradesh's intention to store more water at Nagarjuna Sagar.

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<sup>3</sup> Shah, R.B., *Inter-state River Water Disputes: A Historical Review*, 175-189, (1994)

### **The Tribunal's decision**

The Krishna Tribunal reached its decision in 1973, and the award was published in 1976. The Tribunal relied on the principle of equitable apportionment for the actual allocation of the water. It addressed three issues:

- (1) The extent to which the existing uses should be protected as opposed to future or contemplated uses.
- (2) Diversion of water to another water shed.
- (3) Rules governing the preferential uses of water.

The Tribunal's rulings were as follows:

- ✓ In the first issue, the Tribunal concluded that projects, which were in operation or under consideration as in September 1960, should be preferred to contemplated uses and should be protected and that except by special consent of the parties, a project committed after 1960 should not be entitled to any priority over contemplated uses.
- ✓ In the second issue, the Tribunal concluded that diversion of Krishna waters to another waterline was legal when the water was diverted to areas outside the river basin but within the political boundaries of the riparian states. It was silent regarding the diversion of water of water to areas of non-riparian states.
- ✓ In the third issue the Tribunal specified that all existing uses based on diversion of water outside the basin would receive protection.
- ✓ As regards the westward diversion of the Krishna waters by Maharashtra for power production, it was agreed that the existing utilization for these projects was to be protected.
- ✓ The Tribunal ruled that the use of water for irrigation was to be preferred to the production of hydroelectric power for two reasons:
  - a) Water is the only source of irrigation whereas coal, oil and other natural resources can be used for generating power.
  - b) Considering the socio-economic needs of the population and their dependence on the Krishna water for irrigation, the Tribunal ruled that irrigation should be given preference to power.
  
- ✓ The Tribunal made provisions for review of its order any time after 31st May 2000.

The Godavari Tribunal commenced hearings in January 1974, after making its award for the Krishna case. It gave its final award in 1979, but meanwhile the states continued negotiations among themselves, and reached agreements on all disputed issues. Hence the Tribunal was merely required to endorse these agreements in its award. Unlike in the case of other tribunals,

there was no quantification of flows, or quantitative division of these flows: the states divided up the area into sub-basins, and allocated flows from these sub-basins to individual states<sup>14</sup>. Another difference was that the agreement was not subject to review, becoming in effect, perpetually valid.

### **THE CAUVERY DISPUTE<sup>4</sup>**

The core of the Cauvery dispute relates to the re-sharing of waters that are already being fully utilized. Here the two parties to the dispute are Karnataka (old Mysore) and Tamil Nadu (the old Madras Presidency). The origin of the present dispute can be traced back to the 1892 agreement, between the then Mysore and Madras governments. This agreement specified the limits within which no new irrigation works could be constructed by Mysore state without previous reference to the Madras government objected to the new irrigation project proposed by the then Mysore state. The Madras farmers had acquired easement rights over the Cauvery waters by prescription from the Cholas, a medieval ruling dynasty in South India. The Madras government contended that these rights would be affected if the Mysore government were to build new irrigation works in the Cauvery.

In this 1892 agreement, we find that a lower riparian state (Madras) was given veto power over all the irrigation works of an upper riparian state (Mysore). Mysore had to accept this arrangement because British Resident controlled it. The second phase of development of irrigation under the Cauvery which can be dated from the 1892 Agreement, extends to include the 1924 agreement and the construction of Krishnarajasagar dam and the Mettur reservoir.

In 1909, the Mysore government proposed to construct the Krishnarajasagar dam across the Cauvery. The Madras government, fearing that this would affect the Thanjavur delta, protested against the construction of the dam. From the second half of 1921 to early 1924, exchanges were pursued through correspondence and technical meetings. But during the course of these negotiations, no consensus could be reached. The governments of Mysore and Madras in February of that year formally concluded the 1924 agreement.

According to the agreement the Mysore state was entitled to extend irrigation to an extent, then fixed at 110,000 acres in Mysore. The Madras government gave assent to the construction of the dam and reservoir at KRS to a height of 124 ft above the riverbed and to a capacity of 44.827 TMC ft. There was also a provision that the clauses of 1924 agreement would be open to reconsideration after 50 years from its date of execution.

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<sup>4</sup> Guhan, S., *The Cauvery Dispute: Towards Conciliation*, ( Madras: Kasturi & Sons, 1993)

Between 1924-34 there was little irrigation work in the Cauvery basin. In Mysore, the total irrigated area remained stagnant at 1.1 lakh acres between 1900-30. In Madras, there was a one-lakh acre increase in the same period. The total area under irrigation in the Cauvery basin was 14.4 lakh acres.

Understanding the history of irrigation development from 1934-1990 provides useful background to the emergence and exacerbation of the Cauvery dispute from the late 1960s onwards. The period 1934-90 can be divided into two sub periods. Between 1934-1972, the Mettur and other projects added 6.4 lakh acres to the pre Mettur extent of 14.4 lakh acres.

Madras did not seek any extra water, as there had been considerable expansion of irrigation, beyond what had been assured to it under the 1924 agreement. From 1972-1990 there was substantive ayacut development and change in the inter- state utilization of the Cauvery waters. These factors formed the continuation of the dispute and led to negotiations.

Repeated meetings failed to produce agreement, leading to the formation of a tribunal. In mid 1950s, a series of meetings and correspondences took place between Karnataka and Tamil Nadu on the Cauvery waters. More meetings in 1970 when followed this Kerala were also included as one of the basin states. In February 1970, Tamil Nadu requested the GOI to refer the dispute to a tribunal under the ISWD Act 1956. When the central government did not comply with this request, Tamil Nadu moved the Supreme Court in August 1971 to refer the dispute to a tribunal and to direct Karnataka not to proceed with its new projects. Between 1968 and 1990, 26 meetings were held at the ministerial level but no consensus could be reached. The Cauvery Water Dispute tribunal was constituted on June 2, 1990 under the ISWD Act, 1956.

There has been a basic difference between Tamil Nadu on the one hand and the central government and Karnataka on the other in their approach towards sharing of Cauvery waters. The government of Tamil Nadu was of the view that as Karnataka was constructing the Kabini, Hemavathi, Harangi, and Swarnavathi dams on the river Cauvery and was expanding the ayacuts<sup>5</sup>, this would diminish the supply of waters to Tamil Nadu, and adversely affect the prescriptive rights of the already acquired and existing ayacuts. The government of Tamil Nadu also maintained that the Karnataka government had failed to implement the terms of the 1892 and 1924 Agreements relating to the use, distribution and control of the Cauvery waters. Tamil Nadu asserts that the entitlements of the 1924 Agreement are permanent. Only those clauses, which deal with utilization of surplus water for further extension of irrigation in Karnataka and Tamil Nadu, beyond what was contemplated in the 1924 Agreement, can be changed.

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<sup>5</sup> This term refers to irrigation works

In contrast, Karnataka questions the validity of the 1924 Agreement. According to the Karnataka government, the Cauvery water issue must be viewed from an angle, which emphasizes equity and regional balance in future sharing arrangements. It must embrace the following **issues**:

- 1) Eliminating or minimizing social, economic and regional imbalances among the basin states.
- 2) Providing equitable shares of water to the basin states.

The GOI proposals have stressed economy and efficiency in water uses. The Tribunal passed its interim order in June 1991.

- (i) Firstly, Karnataka was directed to ensure that 205 TMC feet of water was made available at Mettur, from its reservoirs in a twelve-month period from June to May until the final adjustment of the dispute by the Tribunal. The Tribunal recognized that a monthly pattern of release was necessary for meeting the seasonal cropping requirements of Karnataka. Tamil was directed to release 6 TMC ft of water to Pondicherry in a regulated manner.
- (ii) Secondly, Karnataka was directed not to increase its area of irrigation from the Cauvery waters beyond 11.2 lakh acres.

The Karnataka government questioned the soundness of the order on all possible grounds. After hearing Karnataka's standpoint, the Tribunal passed its clarificatory order in April 1992. The clauses of the Interim order 1991 were upheld. The Tribunal made it clear that if seasonal conditions so required, then it was willing to alter any interim order passed by it. It further specified that, the Tribunal's interim order would not in any way influence the final adjudication. In the subsequent months of 1992, the Tribunal has framed a comprehensive list of 50 issues for adjudication. All the basin states participated in the hearings. More recently (January 1996), Karnataka has opposed the Tribunal's interim award, and threatened to boycott further proceedings, although frantic negotiations between the prime minister and state chief ministers led to a compromise over the interim award. To date, there has been no final resolution of this dispute.

Several reasons for which the negotiations of 1968-1990 failed to bring about a consensus are as follows:

- 1) In the current Cauvery dispute there has not been a single strong mutual interest between Karnataka and Tamil Nadu. The latter has sought to abide by the entitlements of 1924 Agreement. But, in 1974 Karnataka declared that the 1924 Agreement had become null and void.

2) There was a divergence of interest between Karnataka and Tamil Nadu on the question of pursuing negotiations. In 1970, Tamil Nadu began pressing for a Tribunal. In 1971, it moved the Supreme Court for adjudication by a Tribunal. Tamil Nadu participated in negotiations right until 1990. But Karnataka was interested in prolonging the negotiations and thwarting the reference to a tribunal. Karnataka did this to gain time to complete its new projects.

3) In the current dispute, the GOI did not play a consistent role. Though it had become clear, as early as in 1978 that a mutual agreement could not be arrived at, the Tribunal was constituted only in 1990, after mediation by the Supreme Court. The Karnataka government was opposed to referring the dispute to a Tribunal. But, Tamil Nadu believed that the center was allowing negotiations to be prolonged in accordance with Karnataka's wishes.

4) The Cauvery issue became intensely politicized in the 1970s and 1980s. Different political parties ran the respective governments in the two states. The Congress was in power in Karnataka during 1968-83 and in 1989-90, while the Janata Dal and the Janata were in power in 1983-89. In Tamil Nadu, the DMK was in power during 1967-76 and in 1989-91 and the AIDMK for the decade 1977-87, except for a short break. Active bipartisan politics in both states made an ultimate solution more difficult.

5) Between 1968 and 1990, there were three chief ministers in Karnataka belonging to three different political parties, while in Tamil Nadu, there were four chief ministers belonging to two parties. There were two long periods of President's Rule in Tamil Nadu.

At the center, there were six changes of Prime Minister, spanning four political parties and eight different Union Ministers of irrigation. So, consecutive occasions when the same set of ministers from the same state and the center met were rare.

6) The ministerial meetings were held at regular intervals. No attempt was made to generate technical options to the sharing of Cauvery waters. Expert engineers were not able to work together for a common solution; rather they got involved in party politics.

Prolonged and inconclusive negotiations over two decades have failed to settle the Cauvery problem. There was no consistent attempt by the central government to mediate and conciliate differences between Tamil Nadu and Karnataka, during the process of negotiations. There was no binding arbitration, and the parties opted for their threat points, possibly leading to sub optimal use of water and sub optimal investments affecting the use and storage of water.

### **THE RAVI-BEAS DISPUTE<sup>6</sup>**

Punjab and Haryana, the main current parties in this dispute, are both agricultural surplus states, providing large quantities of grain for the rest of India. Because of the scarcity and uncertainty of rainfall, irrigation is the mainstay of agriculture. An initial agreement on the sharing

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<sup>6</sup> Dhillon, P.S., *A Tale of Two Cities*, (Chandigarh: Dhillon Publishers, 1983)



of the waters of the Ravi and Beas after partition was reached in 1955, through an inter-state meeting convened by the central government. This agreement allocated the surplus beyond pre-partition use to the states of Punjab (then essentially including what is now Haryana), PEPSU (an amalgamation of former princely states), Rajasthan, and Jammu and Kashmir. In 1956, PEPSU was merged into Punjab, and their shares under the 1955 treaty were also combined, for a total of 7.2 m.a.f..

The present dispute between Punjab and Haryana about Ravi-Beas water started with the reorganization of Punjab in November 1966, when Punjab and Haryana were carved out as successor states of erstwhile Punjab. The four perennial rivers, Ravi, Beas, Sutlej and Yamuna flow through both these states, which are heavily dependent on irrigated agriculture in this arid area. Irrigation became increasingly important in the late 1960s with the introduction and widespread adoption of high yielding varieties of wheat. While increased access to underground water through tube wells helped considerably, the sharing of river water became increasingly contentious.

After the reorganization of Punjab in November 1966, 40.16 m.a.f (one million acre feet) total water of all the four perennial rivers serving erstwhile Punjab was distributed between various states as shown in the table below:

Erstwhile Punjab inclusive of Delhi	26.24 m.a.f
Rajasthan	10.44 m.a.f
Uttar Pradesh	2.79 m.a.f
Jammu & Kashmir	0.69 m.a.f
<b>Total</b>	<b>40.16 m.a.f</b>

Erstwhile Punjab was left with 26.24 m.a.f of water. In May 1967, Haryana asked the Punjab government's consent for a share of 4.8 m.a.f out of the total surplus of 7.2 m.a.f that had been allocated to Punjab (plus PEPSU) as a result of the 1955 agreement. In 1976, the central government issued a notification allocating 3.5 m.a.f. to Haryana. Punjab, argued that this award

would hinder further development of canal irrigation. Now Haryana was a non-riparian and non-user in respect of the water of Ravi-Beas, while Punjab was a riparian and user. Punjab maintained that it would not spare any water of Ravi-Beas beyond what Haryana was entitled to as a successor state, under section 78 of the Act of Parliament, 1966, which reorganized Punjab. The law stipulated apportionment of waters as a result of the Beas project, having regard to purposes of the project. The dispute thus mainly centered on the interpretation and application of this law. Punjab further argued that Haryana could use the water of the two rivers for irrigation only through the use of large and costly lifts. It also argued that, while Haryana has access to the water of the Ganges, Punjab had no alternative to the Ravi-Beas water.

As a result of the protests by Punjab, further discussions were conducted (now including Rajasthan as well), and a new agreement was accepted in 1981. The available surplus under the 1955 agreement was re-estimated and revised upward by 1.32 m.a.f. And Haryana and Punjab were allocated 3.5 and 4.22 m.a.f. respectively. This agreement, reached by a state government allied to the central government, became a source of continued protest by the political opposition, and lobbies outside the formal political process. Punjab entered a period of great strife, and a complex chain of events led to the constitution of a tribunal to examine the Ravi-Beas issue in 1986. The Ravi-Beas Tribunal further revised upward the estimate of the available surplus, and made an award in 1987 of 5 m.a.f. and 3.83 m.a.f. to Punjab and Haryana respectively. Both states sought clarifications of aspects of the award, but the center has not provided these. Hence, the award has not been notified, and does not have the status yet of a final binding decision.