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The Mahadayi River Water Disputes between Karnataka and Goa

The Mahadayi river water disputes between Karnataka and Goa are likely to have implications for the assembly elections in Karnataka scheduled for April-May 2018. Both the incumbent and the opposition parties are hoping to make electoral gains from the disputes. Some of the candidates are allegedly extending support to the groups calling for a shutdown in Karnataka over the Mahadayi river issues. Constitutionally, a tribunal, which was set up in August 2013 to look into the Mahadayi river water disputes, is expected to deliver its verdict by August 2018.

Amit Ranjan¹

Interstate water disputes have emerged to become a major domestic challenge for India. Most of these disputes centre on the sharing of water from inter-State rivers and/or due to the construction of diversion projects by the upper riparian State. The water disputes between Goa and Karnataka over the sharing of water from Mahadayi/Mandovi river (also known as Mhadei or Mahadeyi) is a combination of both these reasons. It is also the latest of such disputes between Indian States. Mahadayi is a rain-fed river which originates at Bhimgad in Khanpur Taluk in the Belgaum (also known as Belgavi) district of Karnataka. It is about 111 kilometres

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long. It has basin areas in Maharashtra (four per cent), Karnataka (18 per cent) and Goa (78 per cent). Mahadayi river is one of the most important sources of fresh water, especially for Goa.²

Constitutionally, in India, water is a subject over which both the Union and the State governments have their respective powers. Under Entry 56 of the Union List³ in the Seventh Schedule of the Constitution of India, the Union government has powers over the inter-State river system and its development. On the other hand, the States have powers over their rivers under entry 17 of the State List. However, the latter is subject to entry 56 of the Union List. There is an indirect mention of water and rivers in the Concurrent List. Entry 20 in the List covers social and economic planning which also includes water-related projects for agricultural activities, industrial needs and for drinking purposes. All such central government-funded or aided projects in the States are first cleared by the Union government.⁴

According to the rules of division of powers laid down in the Constitution of India, both the Union government and the States can make laws on all issues placed in the Concurrent List of the Seventh Schedule. However, in case of a conflict between the Union legislation and that of a State, the former prevails. However, if a law made by the State legislature has received an assent, after being reserved for some time, from the President of India, then it shall prevail in that State. Nonetheless, this does not prevent the Indian parliament from amending or repealing the law. In an attempt to consolidate its power, the Union government has tried, in the past, to bring water issues in the Concurrent List but without success. The possibility of bringing water into the Concurrent List was first looked into by the first Centre-State Commission set up by the Union government under (Retired) Justice Ranjit Singh Sarkaria in 1983. After going through the constitutional division of powers between the Union and the State governments, the Commission felt that such a change was unnecessary.⁵ About three decades later, during

² “What is the Mahadayi river dispute?”, *Indian Express*, 24 January 2018. <http://indianexpress.com/article/what-is/what-is-the-mahadayi-river-issue-5037378/>. Accessed on 16 February 2018.

³ There are three lists in the Indian Constitution under schedule VII. The Union List contains 100 (97 are listed) items on which only Union government can make laws. The State List contains 61 (66 originally listed) items on which the State governments can make laws. Finally, there is a concurrent list which has 52 (47 are listed) items on which both the Union and state governments can make laws.

⁴ In 1950, the Planning Commission of India was set up with Prime Minister as its chairman. The Commission made five-year plans since then. All development-related central government funds were cleared by the Commission. In 2014, after becoming Prime Minister, Narendra Modi decided to dissolve the Commission and replaced it with a policy think tank known as the National Institution for Transforming India (NITI) Aayog (Commission).

⁵ “Should Water be moved to Concurrent list?”, Ramaswamy R Iyer, *The Hindu*. 18 June 2011. <http://www.thehindu.com/opinion/lead/should-water-be-moved-to-concurrent-list/article2113384.ece> Accessed on 18 February 2018.

the United Progressive Alliance-led government (2004-2014), the Ashok Chawla Committee, which was primarily concerned with the question of rationalising the allocation of natural resources with a view to reducing the scope for corruption, had also recommended shifting water into the Concurrent List.⁶ However, such a retrograde step could not be taken mainly because the Union government depended on the regional political parties for its survival. Once again, in 2017, Uma Bharti, then-Union Minister of Water Resources in the National Democratic Alliance government, stated that the Union government was discussing the issue to bring water into concurrent list with the States.⁷ However, despite all such moves by the Union government, at present, the position and status of water, as a subject in the Indian constitution, remains unchanged.

Origins of the Mahadayi Water Disputes

In 1980, farmers from North Karnataka carried out violent protests in Naragund (in Karnataka) under the banner of *Raitha Sangha* (Farmers Union). The farmers felt betrayed by the government over the unavailability of water for irrigation. Following the completion of Naviluteertha Reservoir, the Karnataka government decided to charge a levy of ₹1,500 (\$31) to provide better irrigation facility to the farmers from the Malprabha river Command Area. However, the farmers did not receive the promised water for their fields.⁸ During the protests at Naragund, two farmers were killed in clashes with the police. To look into the matters, a committee under S R Bommai was set up by the Karnataka government. After going through the reasons of farmer's unrest, the Bommai Committee recommended linking Mahadayi and Malaprabha rivers. According to the Committee, this would address the water-related issues of the farmers. To undertake this linkage, in 1989, Karnataka and Goa signed a memorandum of understanding (MOU) to construct a dam across the tributaries of Mahadayi river-Khalsa (Kalasa or Kalsa) and Bhandura (Banduri).⁹ However, the work on the project did not progress beyond the MOU signed between the two States. In 2002, Karnataka witnessed a drought. To find a long-term solution to the water issue, the S M Krishna-led Karnataka government revived

⁶ Ibid.

⁷ "Water May be Put in the Concurrent list", *Governance Now*, 13 January 2017. <http://www.governancenow.com/news/regular-story/water-may-be-put-in-the-concurrent-list>. Accessed on 20 February 2018.

⁸ "All You Need to know About the Mahadayi Dispute", *The Hindu*, 24 January 2018. <http://www.thehindu.com/news/national/karnataka/all-you-need-to-know-about-the-mahadayi-dispute/article22522644.ece>. Accessed on 6 February 2018.

⁹ Ibid.

the Khalsa (Kalasa or Kalsa)-Bhandura (Banduri) project.¹⁰ This project envisaged the transfer of around 7.56 thousand million cubic feet¹¹ of water from the Mahadayi basin to the Malprabha basin.¹² As this project involved inter-State rivers, it was cleared by the Union government in 2002.

Since then, Goa and Karnataka have been in dispute over Mahadayi river water sharing and diversion projects. To address the disputes, in July 2002, Goa made a request under Section 3 of the Inter-State River Water Disputes Act, 1956, (as amended in 2002), for the constitution of the Tribunal by the Union government. The references mentioned in the request included the assessment of available utilisable water resources in the basin at various points, the allocation of this water to the three basin States, keeping in view the priority in the use of the water within the basin, and the determination the machinery to implement the decision of the tribunal, among others.¹³

Initially, the Union government tried to address this inter-State water disputes by holding negotiations between the disputing basin states of Karnataka, Goa and Maharashtra. However, Goa did not show any interest in these negotiations, and was adamant on setting up a tribunal. In most of the inter-State water disputes cases, the disputants prefer a tribunal over direct negotiations or mediation by the Union government because the tribunal is considered to be technically perfect, politically impartial and objective in its assessment of the problems. For this, in 2006, Goa filed a petition before the Supreme Court (SC) of India to set up such a tribunal to adjudicate the Mahadayi river water disputes. It also made a request to the SC to issue interlocutory application to halt all the construction activities over the river.¹⁴ The writ petition was listed on a number of occasions before the SC but no verdict was delivered by the SC. Eventually, in 2009, the Union cabinet decided to constitute a tribunal – a notification for

¹⁰ Ibid.

¹¹ In India, million cubic feet are used as a standard to measure the volume of water in a river or reservoir. In some cases, the Central Water Commission in India uses cubic kilometre as a standard to measure the quantity of water. One cubic kilometre equals 35.32 thousand million cubic feet. The Commission also uses the Billion Cubic Metre as a standard to measure surface water. See water-related reports of the Commission like National Register of Large Dams, Central Water Commission. http://www.cwc.nic.in/main/downloads/NRLD_04012017.pdf. Also see <http://www.cwc.nic.in/>. Accessed on 15 March 2018.

¹² “Goa Karnataka fights over Khalsa-Bhandura Project”, Vasudha Sawaiker, *Down to Earth*, 31 October 2006. www.downtoearth.org.in/news/goa-karnataka-fight-over-khalsabandhura-project-8572. Accessed on 16 February 2018.

¹³ “Mahadayi/Mandovi River’ Ministry of Water Resources, River Development & Ganga Rejuvenation”, Government of India. <http://mowr.gov.in/acts-tribunals/current-inter-state-river-water-disputes-tribunals/mahadayimandovi-river>. Accessed on 6 February 2018.

¹⁴ Ibid.

the Mahadayi Water Disputes Tribunal (MWDT) was issued on 16 November 2010. In 2014, the Union government decided that the effective date of the constitution of the MWDT should instead be 21 August 2013. Accordingly, the MWDT was to submit its verdict within three years of its constitution. However, it received a one-year extension in 2016 and another one-year extension in 2017. The tribunal is scheduled to deliver its verdict on or before 20 August 2018.¹⁵

Goa has alleged that Karnataka's diversion of water from the river would disturb the ecological balance and would harm the State's ecosystem. This is primarily because, in the coastal areas, the overexploitation of the fresh ground water connects the sources of water to the sea water. This process leads to an increase in the contents of salt and minerals in ground water. As a coastal State, in Goa, due to the ingress of salt water in fresh water sources, the green belt, including the mangrove forests, would be affected.¹⁶

Karnataka, on the other hand, has maintained that the surplus water from Mahadayi river drains into the sea. It could be diverted into the deficit basin in Malaprabha to meet the State's drinking, irrigation, agriculture and power generation needs.¹⁷ Goa has also contended that, as water-deficient State, any attempt to limit its water supply would adversely affect its water supply and agricultural production.

In 2015, Karnataka filed an interim application, demanding 7.56 thousand million cubic feet of waters from Mahadayi river to meet the water requirements of the farmers from the North Karnataka.¹⁸ This was rejected by the tribunal. Besides the tribunal, there have been efforts at an out-of-court settlement of the disputes. In 2016, a meeting was called between the Chief Ministers of Goa, Karnataka and Maharashtra. Then, in July 2017, once again, the Karnataka Chief Minister requested for a meeting between the three States over the Mahadayi river issue. On both occasions, Goa refused to attend the meetings. The State maintained its earlier stated position that it was not in a favour of an out-of-court settlement of the Mahadayi river water disputes with Karnataka.

¹⁵ Ibid.

¹⁶ "What is the Mahadayi river dispute?", op. cit.

¹⁷ Ibid.

¹⁸ Ibid.

The 2018 Karnataka Assembly Elections and Mahadayi River Issues

Karnataka will have its assembly elections in April-May 2018. The Mahadayi river water disputes are likely to emerge as an important issue during the election campaigns. The farmers from the northern districts of Karnataka like Belagaum, Dharwad, Gadag and Bagalkote have already made a demand for an out-of-court settlement of the issues with Goa. In those districts, the farmers are also calling for a speedy implementation of the project works so that the water issues in these districts could be addressed.¹⁹ In support of their demands, on 27 December 2017, some members of the Karnataka *Raitha Sena* (Farmers Army) from several districts organised sit-in protests outside the Bharatiya Janata Party (BJP)'s head office in Malleshwaram. The Karnataka Rajya Raitha Sangha alleged that the BJP is raking up the Mahadayi river water issues, mainly, for electoral gains. Again, about a month later, on 25 January 2018, the pro-Kannada outfits observed a 'Karnataka Bandh' (Karnataka Shutdown). As Vatal Nagaraj, leader of Kannada Chalavali Vatal Paksha, claimed, the shutdown had the support of about 2,000 Pro-Kannada outfits.²⁰ The protestors had also demanded the intervention of India's Prime Minister Narendra Modi in the dispute between Goa and Karnataka.

On 20 December, 2017, after a meeting in New Delhi with the BJP leaders from Karnataka, in the presence of the BJP president, Amit Shah, Goa's Chief Minister Manohar Parrikar said that Goa was ready to share "reasonable and justified" quantity of waters from Mahadayi river with Karnataka for its drinking water needs. In a letter to Karnataka's BJP leader B S Yaddyurappa, which was distributed to the press, Parrikar stated that his government was ready to share water from Mahadayi river with Karnataka. However, he emphasised, that "the same needs to be discussed bilaterally as suggested by the Honourable Tribunal [MWDT]".²¹ Both the statement by Parrikar and the letter have been seen as political moves by him to support his party in the upcoming assembly elections in Karnataka. One of the early comments on Parrikar's offers to Karnataka was from Vinod Palyekar, Water Resources Minister of Goa, and a member of Goa Forward Party which is an alliance partner of the BJP in the State. In his statement, Palyekar

¹⁹ "All You Need to know About the Mahadayi Dispute", op. cit.

²⁰ "Mahadayi Row: Pro-Kannada Outfits to Observe Karnataka Bandh Tomorrow", *The Economic Times*, 24 January 2018. <https://economictimes.indiatimes.com/news/politics-and-nation/mahadayi-row-pro-kannada-outfits-to-observe-karnataka-bandh-tomorrow/articleshow/62635924.cms>. Accessed on 18 February 2018.

²¹ "Goa ready to give Mahadayi river water for Karnataka's drinking needs: CM Parrikar", *The Indian Express*, 21 December 2017. <http://indianexpress.com/article/india/goa-karnataka-mahadayi-river-water-cm-parrikar-4993222/>. Accessed on 16 February 2018.

stated that, “whatever he (Parrikar) has written (in the letter), he has not sent to me. If he has sent it to Karnataka, I can only say that it must be a political stunt.”²² Palyekar added that “his state will not share ‘a drop of water’ of the Mahadayi river with Karnataka”.²³ On the status of the letter, the Goa Chief Minister also stated that the letter was “legally perfect”. Nuancing his statements, the Chief Minister maintained that his government would protect the water interests of the State.

The statement by Parrikar and his letter may lead to the assumption that States having governments from a same political party could take steps to address their bilateral water disputes. However, this is not necessarily the case. In past, the riparian States having governments from same political parties which, at the same time, were also in power at the Union level, had failed to find solutions to their water disputes. There are few such examples. One of the recent ones was of the passing of the Punjab Termination of Agreement Act, 2004 by the Punjab assembly in July 2004. At that time, the Indian National Congress was heading a coalition government at the Centre, and was in power in Rajasthan and Punjab. In Haryana, the Congress party came into power in 2005. This act terminated Punjab’s water sharing agreements with the adjoining states of Haryana, Rajasthan, Himachal Pradesh, Jammu & Kashmir and Delhi. It was seen as an attempt by the Punjab government to acquire an absolute control over the shared water resources. The party machine failed to address the situation. To find a legal advice over the Act, the President of India, under article 143(1), sought an opinion from the SC of India. The Act was annulled by the SC in 2016 in its advisory judgement.²⁴ Hence, as the nature of the water disputes are such, even if the BJP somehow manages to win the Karnataka assembly elections, it could still be difficult for it to address the water disputes between the two States.

Meanwhile, on the legal front, Goa and Karnataka presented their respective cases before the MWDT in January 2018. The Goa government stated that the Mahadayi river water demand

²² “Mahadayi river row: Ahead of Karnataka Assembly polls, BJP-Congress dispute over water sharing escalates”, Naqshab Bhat, *First Post* 28 December 2017. <http://www.firstpost.com/video/mahadayi-river-row-ahead-of-karnataka-assembly-polls-bjp-congress-dispute-over-water-sharing-escalates-4278537.html>. Accessed on 26 February 2018.

²³ Ibid.

²⁴ “The Punjab Termination of Agreement Act, 2004”, In The Supreme Court of India Advisory Jurisdiction Special Reference No. 1 of 2004. <http://supremecourtfindia.nic.in/jonew/bosir/orderpdf/2820491.pdf>. Accessed on 2 October 2017.

by neighbouring Karnataka was for irrigating its water-drained sugarcane crop in the region.²⁵ On its part, Karnataka gave the assurance that it would not start work on the Kalasa canal at Kankumbi until the tribunal gives its verdict. Karnataka also informed the tribunal that it has not transferred water from Mahadayi river to Malaprabha river basin, and has no such intention until the tribunal delivers its verdict on the issue.²⁶ After the hearings, the tribunal will deliver its verdict which would decide whether this river water dispute, like many others in India, continues or concludes.

Conclusion

Karnataka is one of the water deficient States of India. It is highly dependent on rain-fed rivers, which it shares with the adjoining States. As the other riparian States are also dependent on these shared rivers, Karnataka is engaged in disputes with almost all its riparian neighbours. For example, in the past, Karnataka was a party to the Godavari and Krishna river waters disputes.²⁷ At present, the State is also engaged with Tamil Nadu on decades-long Cauvery water issue.

It is difficult to solve the Mahadayi river water disputes because of structural reasons, physical availability of water and the nature of the water disputes in India. Past experiences show that most of the inter-State water disputes in India have stretched over decades because of the legal complexities while some have resurfaced after remaining dormant for a few years. On the current dispute, Karnataka and Goa have expressed their trust in the MWDT. It would, therefore, be interesting to watch their reactions once the verdict is delivered. In the meantime, it could become an important issue in the upcoming Karnataka assembly elections.

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²⁵ “What is the Mahadayi river dispute?”, *The Indian Express*, 24 January 2018. <http://indianexpress.com/article/what-is/what-is-the-mahadayi-river-issue-5037378/>. Accessed on 16 February 2018.

²⁶ “Mhadeyi: Goa Withdraws plea over Kalsa Work”, *Times News Network*, 14 February 2018. <https://timesofindia.indiatimes.com/city/goa/mhadei-case-go-a-withdraws-plea-over-kalsa-work/articleshow/62911693.cms>. Accessed on 16 February 2018.

²⁷ The two inter-State rivers water disputes have re-surfaced. Since 2014, the main disputant states are Andhra Pradesh and Telangana.