

ISAS Insights

No. 454 – 22 August 2017

Institute of South Asian Studies
National University of Singapore
29 Heng Mui Keng Terrace
#08-06 (Block B)
Singapore 119620
Tel: (65) 6516 4239 Fax: (65) 6776 7505
www.isas.nus.edu.sg
<http://southasiandiaspora.org>



Water Disputes in India: Andhra Pradesh-Telangana and River Krishna Water-Sharing Disputes

The water-sharing disputes between Andhra Pradesh and Telangana are the latest in a list of on-going inter-state riparian issues in India. While these disputes are generally in the nature of inter-State disagreements, most of them also impinge on the distribution of constitutional powers between the Union and the States. This paper examines the constitutional mechanisms to deal with water disputes, and the nature of the disputes over River Krishna. It argues that it is difficult for the Indian States to resolve all such disputes. Hence, they should focus on water-sharing management through the efficient and effective use of the available water.

Amit Ranjan¹

In India, water disputes among the riparian States pose serious political and constitutional challenges to inter-State relationships, as well as test the balance between the Union and the States. In its 2016 verdict on the Termination of Water Agreement Act passed by the Punjab State Assembly in 2004, the Supreme Court (SC) of India had reiterated the constitutional

¹ Dr Amit Ranjan is Visiting Research Fellow at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore. He can be contacted at isasar@nus.edu.sg. The author bears full responsibility for the facts cited and opinions expressed in this paper.

superiority of the Union government over the States in matters related to water issues.² Even then, one is not able to confidently conclude that such cases will not come before the SC in future. The riparian States are competing against one another to capture the maximum amounts of water from the shared rivers. Often, such competitions turn into disputes, followed by protracted legal battles among the disputing States.

Constitutional Mechanisms to Address Water Disputes

Matters relating to water issues are dealt with under the provisions in Entry 17 in the State List, Entry 56 in the Union List³ and Article 262 of the Constitution of India. Entry 17 in the State List stipulates that water, that is, water supplies, irrigation and canals, drainage and water power are State subjects.⁴ However, it is not an unqualified entry. Entry 56 in the Union List states that the regulation and development of the inter-state river valleys, to the extent to which such regulation and development under the control of the Union, is declared by the Parliament by law to be expedient in the public interest.⁵

Using its power under Entry 56 of the Union List, the Indian Parliament passed the Rivers Board Act in 1956 which supported the notion of having advisory boards to manage river waters.⁶ Another Act, the Inter-State River Water Disputes (ISRWD) Act, was also passed in 1956 by the Union government deriving power from Entry 56 of the Union List. This Act empowers the Union government to set up tribunals to adjudicate disputes over water-sharing between riparian States. Both of these acts were enacted under Article 262 of the constitution, and they gave more power to the Union government in regulating the water resources of the country.

² See The Punjab Termination of Agreement Act, 2004. http://supremecourtfindia.nic.in/FileServer/2016-11-10_1478777857.pdf. Accessed on 12 November 2016.

³ In the Seventh Schedule of the Constitution of India, there are three Lists. The Union List has 100 items over which only the Union government can make legislation. The State List has 66 items. The States have exclusive powers to legislate on items in this list. However, the federal government can legislate on the provisions under Articles 249, 250, 252 and 253. The Concurrent List has 52 items, over which both the Union and State governments can make laws. Those items, which do not fall under any of these three categories, come under the Residuary category on which only the Union government can make laws.

⁴ Basu, D D, 20th edition (2009), *An Introduction to Indian Constitution*; Nagpur: Butterworth Wadhwa publications.

⁵ Iyer, Ramaswamy R, (2005) *Water Perspectives, Issues, Concerns*. Delhi: Sage Publication.

⁶ Ibid.

In 2002, the National Democratic Alliance government, led by the then-Prime Minister Atal Bihari Vajpayee, amended the ISRWD Act of 1956 by incorporating a few of the recommendations of the Sarkaria Commission's report⁷ in it.⁸ In 2004, the United Progressive Alliance government (UPA) assumed power under Prime Minister Manmohan Singh. It set up the second Centre-State Commission under Justice (Retd) Madan Mohan Punchi. The Punchi Commission, as it was called, submitted its report in 2010 in which it enumerated many shortcomings on the functioning of the ISRWD Act 1956. The Commission made a number of recommendations to improve the functioning of the water disputes tribunal.⁹

The UPA government also set up 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. While looking into the issue, it recommended the shifting of water issue to the Concurrent List.¹⁰ Prior to the Chawla Committee, the Sarkaria Commission also discussed this shift and concluded that it was unnecessary.¹¹

Besides these aforementioned issues, the governance of water resources and the functioning of the relevant governing bodies in India are important matters. Looking into them in September 2016, the Mihir Shah Committee, in its report submitted to the Indian government, recommended the restructuring of the Central Water Commission and Central Ground Water Board. The committee also emphasised the engagement of local actors and called for a limitation of the powers of the Central Water Commission in the decision-making process.¹²

⁷ This Commission was set up in 1980 under Justice (Retd) Ranjit Singh Sarkaria, with an objective to re-visit the constitutional status of Union-State relations. It made various recommendations to improve the Union-State relations. Some of its recommendations were included in the constitution through various amendments. Overall, it maintained the *status quo* on the issue of having a strong Union with all important powers vested in it.

⁸ Sarkaria Commission Report (Chapter xvii) Ministry of Water Resources; Government of India, <http://wrmin.nic.in/forms/list.aspx?lid=365>. Accessed on 12 January 2016.

⁹ See Report of the Commission on Centre-State Relations 2010, Ministry of Home Affairs, Government of India. http://interstatecouncil.nic.in/ccsr_report.html. Accessed on 25 July 2016.

¹⁰ "Should Water be moved to Concurrent list?", *The Hindu*, Iyer, Ramaswamy R, 18 June 2011.

¹¹ *Ibid.*

¹² Report Submitted by the Committee on Restructuring CWC and CGWB, July 2016. http://wrmin.nic.in/writereaddata/Report_on_Restructuring_CWC_CGWB.pdf. Accessed on 12 November 2016.

River Krishna Water-Sharing Disputes

River Krishna or Krishnaveni (as it is called in Andhra Pradesh and Telangana) is the third-longest river in India after the Ganga and the Godavari. It originates in the Western Ghats near Mahabaleshwar in Maharashtra and falls into the Bay of Bengal at Hamasaladevi, Andhra Pradesh. Its principal tributaries are the Ghataprabha, the Malaprabha, the Bhima, the Tungabhadra Palleru, Munneru and the Musi. Krishna's total river basin is around 257,000 square kilometres, out of which the largest area falls in Karnataka (112,600 square kilometres, that is, 43.8 per cent), followed by Maharashtra (68,800 square kilometres, that is, 26.8 per cent), and Andhra Pradesh and Telangana which divide their joint catchment area (around 75,600 square kilometres, that is, 29.4 per cent) between them.¹³

The dispute over the sharing of water from River Krishna started during the colonial days in India. In an effort to address the issue, an agreement was reached in 1892 between the Mysore (princely state, now a part of Karnataka) and the Madras Presidency (which included today's Andhra Pradesh). Later, in 1933, an agreement was concluded between Hyderabad (princely state which included present-day Telangana State and parts of today's Maharashtra) and the Madras Presidency.¹⁴ In independent India, the disputes over the sharing of water from River Krishna first surfaced in the 1960s. To look into the issue, a tribunal under Justice (Retd) R S Bachawat was set up which gave its award in 1976. Initially, the states of Madhya Pradesh and Orissa (now Odisha) were also parties to the dispute. However, they were discharged. As a result, River Krishna's water was distributed among Maharashtra, Andhra Pradesh (which at that time included today's Telangana) and Karnataka.

In its award, the tribunal proposed two schemes. Scheme A took into account 75 per cent dependability of water flow and its distribution among the claimant-States. Scheme B focused on the sharing of surplus water. The final award by the Krishna Water Disputes Tribunal (KWDT) was based on Scheme A, where the three claimant-States were bound by the rules and principles prescribed therein. As they did not agree on Scheme B of the KWDT, it was not included in the final report of the tribunal.¹⁵ Under the award, Maharashtra was allocated 560

¹³ Sudheer, Sana (2013), 'Inter State Water Disputes in India: Sharing of Water among the states'. <https://interstatedisputes.wordpress.com/2013/10/05/inter-state-water-disputes-in-india/>. Accessed on 24 July 2017.

¹⁴ Ibid.

¹⁵ 'Krishna Water Disputes Tribunal Report' Ministry of Water Resources, Government of India. <http://wrmin.nic.in/writereaddata/KVDT-19Oct2016.pdf>. Accessed on 24 July 2017.

thousand million cubic (TMC) feet of water, Karnataka 700 TMC feet of water, and Andhra Pradesh 800 TMC feet of water.¹⁶ In its report, the KWDT provided for a review of its award after 31 May 2000. However, the review did not take place till April 2004 when, following requests made by the three States, the Union government set up the KWDT II to make fresh allocations of water from River Krishna.¹⁷

Between the awards by the KWDT I and the KWDT II, another project which had created tensions is the Telugu Ganga Canal. It was designed to transfer water from River Krishna to Chennai in Tamil Nadu. The deal was seen mainly as a symbol of cooperation on river waters between states.¹⁸ Mediated by the Union government, an agreement was signed in 1983, according to which Andhra Pradesh, Karnataka and Maharashtra agreed to give five TMC feet of water per year to water-starved Chennai. Tamil Nadu had paid ₹5.12 billion (S\$100 million approximately) to Andhra Pradesh for the completion of the project so that the transfer of water could take place.¹⁹ The KWDT II also looked into this issue and, in its award, had allocated water from River Krishna to Chennai.

Headed by Justice (Retd) Brijesh Kumar, the KWDT II started its work in June 2007 and gave its award in December 2010. According to this award, the available water was allocated based on 65 per cent dependability, after considering the data of the flow of the water in the previous 47 years.²⁰ The tribunal awarded 666 TMC feet of water to Maharashtra, 911 TMC feet of water to Karnataka and 1,001 TMC feet of water to Andhra Pradesh.²¹ The tribunal stated that the award would be valid till May 2050 and would then be revised by a competent authority or tribunal. As requested by Karnataka in its petition, the tribunal raised no objections to increasing the height of the Almatti Dam from 519 metres to 524.25 metres which would increase the storage capacity of the dam to 123.08 TMC feet. However, Andhra Pradesh (inclusive of Telangana still) objected to it as it felt that it might not receive significant quantities of water for its major projects. To look into implementation-related matters, the tribunal recommended the establishment of the Krishna Water Implementation Board after

¹⁶ Ibid.

¹⁷ Sudheer, Sana, op. cit.

¹⁸ Wood, John R (2007), *The Politics of Water Resource Development in India: The Narmada Dams Controversy* New Delhi: Sage Publications.

¹⁹ Ibid.

²⁰ Krishna Water Disputes Tribunal: The Report of the Krishna Water Disputes Tribunal with the Decision, Ministry of Water Resources, Government of India. <http://wrmin.nic.in/writereaddata/Inter-StateWaterDisputes/KWDTReport9718468760.pdf>. Accessed on 24 July 2017.

²¹ Ibid.

three months from the implementation of the award. Further, the tribunal's award directed the three States to contribute 3.30 TMC feet of water to Chennai (in Tamil Nadu State) as drinking water between July and October every year, and another 1.70 TMC feet of water to be distributed in four equal instalments between January and April every year.²²

The three States accepted the award. However, a fresh problem arose following the carving out of the State of Telangana from Andhra Pradesh in 2014. This led to the entry of a fourth claimant to the water from River Krishna. To deal with the matter, the Andhra Pradesh Reorganisation Bill (now an Act), 2014, extended the term of the KWDT II. Its terms of reference were to make project-wise specific allocations, if such allocations had not been made earlier, and to determine an operational protocol for project-wise release of water in the event of deficit flows.²³ It also called for the formation of Krishna River Management Board (KRMB), with its headquarters in Andhra Pradesh. The Board's task was to regulate the supply of water from River Krishna to the two States (Telangana and Andhra Pradesh), among other functions.²⁴

In its 2016 verdict, the KWDT II made it clear that it would not revisit the allocation of water among all the riparian States but would focus on the distribution of water among Andhra Pradesh and Telangana. This prompted litigation from Andhra Pradesh and Telangana, the argument being that Section 89 of the Andhra Pradesh Reorganisation Act called for the redistribution of River Krishna's water among all the four riparian States. In its verdict, the tribunal stated that Section 89 was not applicable to all the four States; it was meant only for Telangana and Andhra Pradesh.²⁵ The tribunal asked the two states to appear before it on 14 December 2016. On that day, the tribunal addressed many legal issues regarding the disputes and gave four weeks to Andhra Pradesh and Telangana to file their statements regarding Clauses A and B under Section 89.²⁶ It has to be noted that the final verdict of the tribunal

²² Ibid.

²³ Krishna Water Disputes Tribunal, Ministry of Water Resources, Government of India. <http://wrmin.nic.in/writereaddata/KVDT-19Oct2016.pdf>. Accessed on 24 July 2017.

²⁴ Ibid.

²⁵ "No relook into allocation of Krishna river waters: Tribunal", *The Hindu*. <http://www.thehindu.com/news/national/No-relook-into-allocation-of-Krishna-water-Tribunal/article16075675.ece>. Accessed on 24 July 2017.

²⁶ The Tribunal (a) shall make project-wise specific allocation, if such allocation have not been made by a Tribunal constituted under the Inter-State River Water Disputes Act. 1956; and (b) shall determine an operational protocol for project wise release of water in the event of deficit flows. Krishna Water Disputes Tribunal, Ministry of Water Resources, Government of India. <http://wrmin.nic.in/writereaddata/KVDT-19Oct2016.pdf>. Accessed on 24 July 2017.

delivered in 2016 was put on hold by the Supreme Court from publication in the Gazette of India.²⁷

In meantime, an expert committee was set up by the Union Ministry of Water Resources under a former chairman of the Central Water Commission, A K Bajaj, to suggest a mechanism to enable the KRMB to discharge its duties in line with the Andhra Pradesh Reorganisation Act of 2014.²⁸ One of the stakes of Andhra Pradesh and Telangana is the possibility of partial diversion of the Godavari water to the Krishna basin. To this, Bajaj stated that “the allocation of water to compensate for inter-basin transfer should be done by the water disputes tribunal. If the ministry asked the committee to arbitrate, the latter would make a temporary arrangement.”²⁹

Earlier, in September 2016, Andhra Pradesh opposed two projects initiated by Telangana – the Dindi Lift Irrigation Project (which would make use of 30 TMC feet of River Krishna’s water) and the Palamuru-Rangareddy Lift Irrigation Project (which would consume 70 TMC feet of water from River Krishna). Andhra Pradesh claimed that both projects violated the Andhra Pradesh State Reorganisation Act of 2014.³⁰ Likewise, Telangana too had complained to the Union ministry against the diversion by Andhra Pradesh of about 70 TMC feet of water from Pothireddypadu Reservoir (Srisailem Reservoir foreshore) and the diversion of water from Godavari River to Krishna Basin. Telangana had demanded 90 TMC feet of assured water (as per the Bachawat award in the Godavari Water Disputes Tribunal), in lieu of the Polavaram and Pattiseema Lift Irrigation Projects in Andhra Pradesh.³¹ At the same time, Andhra Pradesh has problems with the excess utilisation of water from the Jurala project by Telangana. However, they have agreed on having a joint committee to assess the utilisation of water for all projects of the two States.³²

²⁷ “No relook into allocation of Krishna river waters: Tribunal”, *The Hindu*. <http://www.thehindu.com/news/national/No-relook-into-allocation-of-Krishna-water-Tribunal/article16075675.ece>. Accessed on 24 July 2017.

²⁸ “Bajaj Panel put the Onus on Tribunal”, *The Hindu*, Rahul, N and G Venkataramana Rao, 16 February 2017. <http://www.thehindu.com/news/national/andhra-pradesh/Bajaj-panel-puts-the-onus-on-tribunal/article17308521.ece>. Accessed on 24 July 2017.

²⁹ Ibid.

³⁰ Maheswari, Uma (2016), ‘State of India’s Rivers for India’s Rivers Week 2016: Andhra Pradesh and Telangana’. <https://sandrp.files.wordpress.com/2017/05/telangana-and-andhra-pradesh-report.pdf>. Accessed on 25 July 2017.

³¹ Ibid.

³² Ibid.

Andhra Pradesh is now taking steps to more effectively use its share of water from River Krishna. Its capital, Amaravati, is coming up on the banks of River Krishna. A new barrage is being built on River Krishna which will connect Amaravati to the Hyderabad-Vijayawada national highway in Krishna district.³³ There is a prevailing sense that, during heavy rains and floods, water from River Krishna goes unutilised into the Bay of Bengal from the Prakasam Barrage. More than 11 TMC feet of floodwater flowed into the sea from the Prakasam Barrage during the rains in 2016. There was then no reservoir between the Nagarjunasagar Dam and the Prakasam Barrage. Now, the Pulichintala project stores 30 TMC feet of water and releases the excess water into River Krishna which reaches the Prakasam Barrage, which unfortunately, goes waste into the sea due to the absence of appropriate storage facility. After announcing the new capital Amaravati on the banks of River Krishna, the Andhra Pradesh government has drawn up plans to construct a barrage to store five TMC feet of water.³⁴ The water from the river will be stored at Vykuntapuram.

Addressing the Water Disputes

In India, the mechanisms to address inter-State river water disputes fall mainly under the jurisdiction of the Union government. It has, therefore, become more of a top-bottom approach for the resolution of such disputes. One of the major issues which the disputant States raise is their respective absolute rights over the water from the shared rivers. This is the basis of the disputes between Punjab and Haryana. In its 2016 Draft National Water Framework Bill, the Ministry of Water Resources, to clarify its position, stated that, “None of the states in a river-basin own the river but, as public trustees of the water resources of the river, all of them have rights to use the water of the river, provided that such use does not violate the right to water for life of any person in the river basin.”³⁵ It further stated that, “All basin states in [the] river system are equal in rights and status, and there is no hierarchy of rights among them, and further, in this context, equality of rights means not equal but equitable shares in the river waters.”³⁶

³³ ‘New Barrage on Krishna river: Vastu favours Vykuntapuram’, *Deccan Chronicle*, Ilyas, M D, 11 October 2016. <http://www.deccanchronicle.com/nation/current-affairs/111016/new-barrage-on-krishna-river-vastu-favours-vykuntapuram.html>. Accessed on 25 July 2017.

³⁴ Ibid.

³⁵ Draft National Water Framework Bill, 2016, Ministry of Water Resources, Government of India. http://wrmi.nic.in/writereaddata/Water_Framework_18July_2016.pdf. Accessed on 8 August 2017.

³⁶ Ibid.

A related issue among the riparian States, in general, is the allegations by the lower riparian States about diversion and choking of water supplies by the upper riparian States. Looking into this issue, the Bill stated that, “The upper basin state shall adopt a cautious and minimalist approach to major interventions in inter-state rivers; provide advance information to the lower basin states about plans for intervention; consult them at all stages on possible impacts; and take care to avoid significant harm or injury to them”.³⁷

In an effort to manage water-related issues due to flood in one region and drought in another region, the Indian government is working on the Interlinking of Rivers (ILR) project. There are two opinions for this project. For the proponents of the ILR, this will effectively address the regional imbalance of water availability and distribution in India. It will also check floods and droughts by supplying excess water from one region to another that needs it. However, others feel that the project will harm the environment and any change in the river’s course is a dangerous exercise. To them, it is akin to an invitation to a natural catastrophe.³⁸

Besides the top-bottom approach to address most of the water disputes in India, the recommendations of the Mihir Shah Committee included the need for the States to engage the local bodies and people living in the catchment areas of the rivers to address any inter-State river water-sharing disputes in India instead of depending on the organs of the Union government.

To manage their available water resources most countries focus more on the demand side instead of supply side management. Many countries across the world are using a high-yielding variety of seeds for their food production so as to address their water needs. The irrigation pattern is also being changed so that less water is used as compared to earlier times. The emphasis is on drip-in irrigation. However, in India, although new means of water management and consumption are being adopted, they are still done on a limited scale.

³⁷ Ibid.

³⁸ See Alagh, Y K, Ganesh Pangare and Biksham Gujja (ed) (2006); Interlinking of Rivers in India: Overview and Ken-Betwa Link: Delhi: Academic Foundation.

Conclusion

Due to the significance of and growing demand for water by the various States in India, water-related disputes will continue to be difficult to resolve. This is despite the enactment of laws and the setting up of various commissions and committees. Emphasis should, therefore, be laid on the premise that the affected States should manage their disputes through effective use of the available water resources as well the adoption of new techniques of irrigation and water management.

.