

## Legal and Constitutional Position of Interlinking of Rivers in India

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### **Abstract**

*The Constitution of India in the Article 262 has provisions regarding to the water disputes and in Articles 131& 136 affected parties may approach to the Supreme Court. Inter-State River Water Dispute Act,1956 authorized to Government to establish water courts for water disputes. Article 246 provides that on which subject matters Parliament or State Legislature has the power to make laws, subject matters are divided into List-I (Union List) , List-II (State List) and List-III (Concurrent List). Parliament has the power to make laws on Union List, State Legislature has the power to make laws on State List and both Union and State have the power to make laws on the concurrent list.*

*In August 2005, The Centre Government and two States Governments (Madhya Pradesh and Uttar Pradesh) signed a memorandum of understanding for the preparation of a Detailed Project Report (DPR) on the Inter-linking of Ken-Betwa Rivers. The central Government in 2008, declared the Ken-Betwa project as a National project, after some time this project was declared as part of the Prime Minister's package for Bundelkhand region development. Finally, in 2021, the Ministry of Jal Shakti and the above two states signed a memorandum of agreement to implement this project.*

*To implement this project Centre Govt. constituted a steering Committee and Ken-Betwa Link Project Authority (KBLPA).KBLPA as per notification has authority to execute the Daudhan Dam, Power House, Ken-Betwa Link water Carrier Canal, Tunnel, Lower Project, Kotha Barrage and Bina Complex multipurpose project.*

### **Keywords**

*Interlinking, Rivers, Constitution, Union, States, Union list, State List, Concurrent List, Water, Dispute.*

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## **Introduction**

The regulation of inter-state rivers basin has been a serious concern of government for many decades and for that purpose River Board Act, 1956 and the Interstate Water Dispute Act, 1956 were drafted. However, even though River Board Act, 1956 has been on the statute book and no river board has been constituted. The ineffectiveness of the River Board Act, 1956 does not imply that the idea of river-basin-based planning, management and regulation has been abandoned. The National Water Policy, 2002 for instance expressly promoted the establishment of river basin organization. To give effect to the provisions of the River Board Act, 1956 it was redrafted and renamed as River Basin Management Bill, 2012 by Justice Doabia Committee. After the declaration of river Ganga, a National River of India, the National Ganga River Basin Authority Notification, 2009 was issued and a more effective initiative was taken by way of drafting the National River Ganga Basin Management Bill, 2013 but has not been taken up by parliament till date on the other hand, in 2015, Parliament repealed the Inter-state Water Disputes (Amendment) Act, 2002 and thereby brought back the act to the pre-2002 position.

## **History of Inter-State and Intra-Basin Water Transfer in India**

Linking of running surface water resources, is a well-established concept, it has been evident since time immemorial. Various phenomena of infiltration, interception, stream-flow, geomorphology, and artesian wells were well understood. Water management and conservation were well known in 400 B.C., and construction methods and materials of dams, bank protection, spillways and other considerations mentioned in the ancient literature, reflect the high stage of development of water resources and hydrology in ancient India. In the Medieval period, human beings started the diversion of water from local resources for irrigation purposes, by the construction of earthen ‘and cuts’ across local streams. The “grand anicut” of the 2<sup>nd</sup> century over the river Cauvery is a true example of a water diversion experience. It was recorded to be functioning till the mid-19th century providing irrigation to 25000 hectares of land resisting the impact of floods for 1600 long years. A long time back irrigation canals were developed by cholas, pandas, and the rulers of Vizianagaram and Kakatiyas for diverting the waters from Cauvery, Tungabhadra and Vaigai. The western Yamuna Canal and Agra Canal were built during the Mughal reign. In the colonial regime, Arthur Cotton, who designed and executed an improvement to the Cauvery anicut in Tiruchirapalli, based on indigenous technology in 1838, paid glowing tributes :

*‘It was from them (the native Indians) we learned how to secure a foundation in the loose sand of unmeasured depth. In fact, what we learned from them made the*

*difference between financial success and failure, for the Madras river irrigation executed by our engineers has been the first the greatest financial successes of any engineering work in the world, solely because we learned from them .... with this lesson about foundations, we built bridges, weirs, aqueducts, and every kind of hydraulic work ... we are thus deeply indebted to the native engineers'.*

Arthur Cotton submitted the first Interlinking of Rivers (ILR) Report on the Mahanadi River to the colonial government of Odisha in 1958. In independent India, ILR can be traced based on two proposals in 1972, and 1977 likewise namely the “Ganga Cauvery Link” and “Garland Canal Scheme” submitted by Dr. K.L. Rao and captain Dastur to the Government of India. Dr. Rao’s proposal was eventually examined by the Central Water Commission and was found to be grossly impractical whereas Captain Dastur’s proposal was examined by an expert panel of IIT engineers and was declared technically unsound and economically prohibited and was rejected.

#### **National Perspective Plan and Inter-State Basin Water Transfer**

The Ministry of Water Resources the then (Ministry of Irrigation) in the year 1980 formulated a National perspective plan for water resources development by transferring water from water surplus basins to water deficit basins by interlinking of rivers. The National perspective plan has two main components i.e, the Himalayan Rivers Development and Peninsular Rivers Development. The National Water Development Agency (NWDA) was set up as a Society under the Societies Registration Act, 1860 and in 1982 to carry out the detailed studies and detailed surveys and investigations and to prepare feasibility reports of the links under the National Perspective plan. NWDA has after carrying out detailed studies, identified 30 links. There are 14 Himalayan Component links and 16 Peninsular Component links. Peninsular River Development envisages, in its first part, the transfer of surplus water from Mahanadi and Godawari basins to the water deficit Krishna, Pennar and Cauvery basins.

The Supreme Court has been instrumental in strengthening the process, in particular through its judgment in *Networking of Rivers, In re*, (2012) 4 SCC 51. There has been support for Inter-basin and intra-basin water transfers in the National Water Policy, 2012. At the State level, the promotion of Inter-basin water transfers within a state has been taken up in some cases, as clearly shown in the Rajasthan River Basin and Water Resources Planning Act, 2015.

#### **Constituent Assembly Debates on Water**

While it is now clear that the mandate of the Union is not automatically expanded to essential aspects of rivers, and more so in the aspect of intra-state

rivers. The true nature of the Legislative mandate can be ascertained from the Constituent Assembly Debates.

The present Entry 56 in the Constitution of India was discussed by the Constituent Assembly on 1st September 1949, wherein it was presented as Entry 74 of List I of the Draft Constitution. The short discussion only had three participants. Shri Brajeshwar Prasad had suggested “*The regulation and development of inter-State rivers and inter-State waterways, including flood control, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest.*” However, Dr. B.R. Ambedkar submitted that all the contents of the amendment proposed by Sh. Brajeshwar Prasad was already in the favor of amendment proposed by Dr. Ambedkar, hence, Dr. Ambedkar also believed in making the Entry non-exhaustive, and applicable to the aspects of flood control, irrigation, navigation and hydroelectric power, etc.

Dr. Ambedkar’s draft was accepted by the Constituent Assembly, without any further discussion. Hence, it can be inferred that the Constituent Assembly was in favor of the present Entry 56 having a wide mandate.

With respect to the present Entry 17 of List II, the same finds a mention only once in the Constituent Assembly Debates as part of APPENDIX ‘A’ of sitting dated 20th August 1947. The same is a letter by Jawaharlal Nehru to the president of the Constituent Assembly, detailing the recommendations of the Union Power Committee, which in LIST II-Provincial Legislative List at Entry 18 had, “*Water; that is to say, water supplies, irrigation and canals-drainage and embankments, water storage and water power*”. This Entry, hereafter finds no mention in the Constituent Assembly Debated and hence any attempt to ascertain its true nature would be futile in light of the absence of any debate.

### **Constitutional Provisions**

Article 246 of the Constitution governs the subject matter of laws made by Parliament for the Union and by the State Legislatures. Hence, the subject matters are divided into List I, List II and List III. List I is Union List in which the legislation can be made exclusively by Union. List II is State List, which empowers States to make laws for subjects mentioned therein. List III is the Concurrent List; this has subjects in which both Union & States can make laws.

In Constitution there is no entry in any of the three lists which authorizes any legislative body to make laws with respect to the river, per se, however, Entry 56 of the Union List reads as below-

Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union are declared by Parliament by law to be expedient in the public interest.

**Moreover, Entry 17, List II Provides**

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.

Article 252 of the Constitution provides the power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State :

- (1) If it appears to the Legislatures of two or more states to be desirable that any of the matter with respect to which parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those states, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterward by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.
- (2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respect any State to which it applies, be amended or repealed by an Act of the Legislature of that state.

Article 262 of the Constitution provides for adjudication of disputes relating to waters of inter-State rivers or river valleys, and it states

- (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distributor, or control of the waters of, or in, any inter-State river or river valley.
- (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) Coordination between States

Article 243G of the Constitution provides for the Powers, authority and responsibilities of Panchayats, and it states.

Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

- (a) The preparation of plans for economic development and social justice;
- (b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

Article 243 G mandates the powers, authority and responsibilities of Panchayats, which are enumerated in the XI Schedule.

Entry 3, XI Schedule is Minor irrigation, water management and watershed development.

Entry II, XI Schedule is Drinking Water

Entry 29, XI Schedule is Maintenance of community assets.

Article 243 W provides for Powers, authority and responsibilities of Municipalities, and it reads

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

- (a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to
  - (i) The preparation of plans for economic development and social justice;
  - (ii) The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- (b) The Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

Like Schedule XI for Panchayats, Schedule XII details powers, authority and responsibilities of Municipalities, etc.

Entry 5, XII Schedule is Water supply for domestic, industrial and commercial purposes.

## **Conclusion**

The development of the Water Law Regime in India is not up to date after independence. This precious natural resource has not been given proper and serious attention for the first four decades of Independence. In 1987 first National Water Policy was issued in 1987 and in 2002 it was redrafted as National Water Policy 2002 and finally in 2012. The Preamble of National Water Policy 2012 clearly shows the importance of the precious natural resource 'Water' and it was felt that there should be a comprehensive water law at national level. There is a specific provision under section 2 namely Water Framework Law in NWP 2012. The Constitution does not have, expressly, any provision about the transfer of water to a non-basin states. The position is different in regard to the inter-State basin (Rivers and River-valleys) for these, the Entry 56 List I provides that their regulation and development can be guided by the Union executive.

In fact and according to the intention of frames of the Constitution, 'water' is as much a Central subject in view of parliament's power under Entry 56 of List I of Schedule 7.

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