

## **The Inter-State River Water Dispute Act-1956**

In order to promote integrated and optimum development of waters of inter-state rivers and river valleys, under Entry 56 of List-I of the Constitution, Parliament has enacted the River Boards Act, 1956. This act contemplated the appointment of river boards by the central government in consultation with the state governments. It is expected that these boards would help in coordinated and optimum utilization of river waters and promote development of irrigation, drainage, water supply. Food control and hydro-electric power.

As per the Act the "Water dispute" means any dispute or difference between two or more state governments with respect to:

- a) The use, distribution or control of waters of, or in any inter-state river or river valley; or
- b) The interpretation of the terms of any agreement relating to the use distribution or control of such water or the implementation of such agreement; or
- c) The levy of any water rate in contravention of the prohibition contained in the Act.

If it appears to the government of any state that a water dispute with the government of another state has arisen or is likely to arise by reason of the fact that interest of the state, or if any of the inhabitants there of in the waters of an inter-state river or river valley have been, or are likely to be, affected prejudicially by:-

- a) any executive action or legislation taken or passed or proposed to be taken or passed by the other state; or,
- b) the failure of the other state or any of their power with respect to the use, distribution or control of such waters; or
- c) the failure of other state to implement the terms of any agreement relating to the use, distribution or control of such water, the state govt. may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication.

When any request is received from any State Government in respect of any water dispute and the Central Government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the official Gazette constitute a Water Dispute Tribunal for the adjudication of the water dispute. Such Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it within a period of three years. If the members of the Tribunal differ in opinion on any point, the point shall be decided by the majority. The Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters namely:

- l) summoning and enforcing the attendance of any person and examining him on both;

- II) requiring the discovery and production of documents and material objects;
- III) issuing commissions for the examination of witnesses or for legal investigation;
- IV) any other matter which may be prescribed**

Under the Act-1956 the union government has set up many water Tribunals like the Krishna Tribunal, the Narmada Tribunal, The Godavari Tribunal, the Cauveri Tribunal, The Ravi, Beas Tribunal etc. But the main problem with respect to Tribunals is inordinate delay at every stage. Even the inability of the states to have a dispute referred to a Tribunal unless the union government is satisfied that no negotiated settlement is possible, causes delay. Generally delay occurs at three stages- 1) in setting up the Tribunal 2) in the announcement of the award and 3) in implementation of the award.

In the last few decades it has been apparent that only the formation of Tribunals and their suggestions are not sufficient to cope with the problem of river-water sharing. The awards of different Tribunal are not backed by enforcing mechanism. Recently the dispute over the implementation of the Cauveri Tribunal has once again flamed this issue. In 1998 the Parliamentary Standing committee on Water Resources, chaired by former union minister for rural area and employment, Mr. K. Yerran Naidu, in its report, urged the government to come forward with a legislation to transfer the subject of "Water " from the State List to the Concurrent List. The committee observed that the ministry of water resources had been rendered weak and ineffective in getting, various resources projects implemented within a time frame in view of the original constitutional role it had to play. The committee said drastic and remedial measures would have to be undertaken within a time frame lest all progress on this front should come to a standstill. The Sarkaria Commission on centre-state relation had made recommendations for amendments to the existing Inter-State Water Dispute Act, 1956.

### **Constitutional and legal provisions**

India is union of States. The constitutional provisions in respect of allocation of responsibilities between the State and Centre fall into three categories: The Union List (List-I), the State List (List-II) and the Concurrent List (List-III). Article 246 of the Constitution deals with subject matter of laws to be made by Parliament and by Legislature of the States. As most of the rivers in the country are inter-State, the regulation and development of water is matter included in Entry is subject to the provision of Entry 56 of List-I i.e Union List. The specific provisions in this regard are under:

1. **Article 246:** 1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as "Union List").
1. Notwithstanding anything in clauses ( 3), Parliament, and subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
2. Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
3. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is enumerated in the State List.

**II Article 262:** In case of disputes relating to waters, Article 262 provides:

1. Parliament may by law provide for adjudication of any dispute or complaint with respect to the use, distribution or control of the water 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).

As such, the Central Government is conferred with powers to regulate and develop inter-state rivers under Entry 56 of List I of Seventh Schedule to the extent declared by Parliament by law to be expedient in the public interest.

It also has the power to make laws for the adjudication of any dispute relating to waters of inter-state river or river valley under Article 262 of the Constitution.

Hence the Constitution does not have any machinery for adjudication of water disputes. The constitution empowers parliament to make such provisions as it think fit for adjudication of such disputes. It provides for reference of such a dispute to tribunals on receipt of an application from a state when the Union Government is satisfied by negotiations. The major criticism against the existing arrangement are 1) they involve inordinate delay in securing settlement of such dispute 2) there is no provision for an adequate machinery to enforce the award of the Tribunal.

The state cannot legislate on use of waters of inter-state rivers and river valley beyond their state boundaries. In the constitution water is a matter comprised in Entry 17 of List-II. This entry is subject to the provisions of Entry 56 of List-I. The result is that no state can effectively legislate inter-state river water for its own benefits. Only Parliament can effectively regulate by law the beneficial use and distribution of such waters among the states. Secondly, the quantity of water available to each of the states depends upon the equitable share of the other states. Thirdly a dispute about the waters of an inter-state river can arise from any actual and proposed legislation of a state.