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Articles

WATER FEDERALISM, TRIBUNALIZATION OF WATER JUSTICE AND HYDRO-POLITICS: INDIA'S INTER-STATE RIVER WATER DISPUTES ACT AT 65 YEARS

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India's water federalism is at a crossroads. It is a unique two-tier system that has the constitutional and enabling provisions for water management and inter-state water dispute resolution as its base. These support the tribunal system that adjudicates inter-state river water disputes and administers water justice. More than six decades have elapsed since its establishment. At the same time, during this period, the per capita water availability has fallen drastically. India is now one of the world's most water-stressed countries. Water disputes between States are becoming more animated and highly volatile. This article examines water federalism in India in terms of two questions: 1) Should water be transferred from the State List to the Concurrent List? 2) Should India persist with the tribunal system or replace it with the judicial process at the Supreme Court level? The first assumes importance as India persists with the river linking project. The second is relevant because the Inter-State River Water Disputes Act is almost 65 years old. In 2016, India's Supreme Court re-wrote the law, and, more recently, the Union Government sought to revamp the Inter-State

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For all her love and support, I dedicate this paper to my dearest "Judgeamma," the Honourable Judge Sandra E. Oxner O.C., Chairperson, Commonwealth Judicial Education Institute, Canada. I am also grateful to the Honourable Justice Madan B. Lokur, Former Judge, Supreme Court of India and to Professors Michael Deuterbide and Diana Ginn of the Dalhousie Law School for their encouragement and affection.

River Water Disputes Act through amendments. All these impel the need to re-look the idea of water federalism as it operates in India in its entirety.

Keywords: Water federalism, Hydro-politics, Cooperative federalism, Competitive federalism, River-linking, Water justice, Tribunalization, Climate change

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I. INTRODUCTION

Of all the natural resources on the earth, it is water that is quintessential to life.[1] However, fresh water constitutes only a tiny fraction of the earth's total water supply.[2] It is against this finite quantity of water that one has to juxtapose the increasing demands of an ever-growing population, economic development, and urbanization.[3] Moreover, since water is the primary medium through which climate change impacts will be felt, one of the most significant natural resource management challenges facing the modern world is the one relating to water.[4] For a federal state as geographically and hydrologically complex, vast, and diverse as India, economic progress is largely dependent on its ability to harness and develop its water resources potential, particularly the rivers that flow through and drain its territory.[5] Even though nearly eighteen percent of the global population lives in India, the country has only around four percent of the global water resources.[6] Transposing this quantity to determine the per capita water availability, in India, it hovers around 1,100 cubic meters (m^3), which is much below the internationally recognized standard of 1,700 cubic meters per person that determines water stress. However, this is just above the perilous threshold of 1,000 m^3 per person used to determine water scarcity.[7] Despite this reality, India is one of the most water-intense economies globally. It is a significant net exporter of virtual water and is one of the largest water users per unit of gross domestic product.[8] These are symptomatic of callousness and apathy in managing this life-sustaining natural resource, which majorly compounds India's water woes.

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[1] *See* G.A. A/HRC/45/10, Progressive Realization of the Human Rights to Water and Sanitation (July 8, 2020); G.A. Res. 64/292, The Human Right to Water and Sanitation (July 28, 2010); General Comment No. 15 (2002): The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. ESCOR, 29th Sess., Agenda Item 3, at 2 n.5, U.N. Doc. E/C.12/2002/11 (2003) [hereinafter General Comment 15].

[2] *See generally* MS Zaman & Robert C Sizemore, *Freshwater Resources Could Become the Most Critical Factor in The Future of The Earth* 62 JOUR. OF THE MISS. ACAD. OF SCI. 348 (2017).

[3] General Comment 15, *supra* note 1.

[4] THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, THE UNITED NATIONS WORLD WATER DEVELOPMENT REPORT 2020: WATER AND CLIMATE CHANGE 16 (2020).

[5] MINISTRY OF JAL SHAKTI, GOVERNMENT OF INDIA, JAL SHAKTI-JAN SHAKTI: MAKING WATER EVERYONE'S BUSINESS 5 (2000).

[6] THE WORLD BANK, HELPING INDIA OVERCOME ITS WATER WOES, https://www.worldbank.org/en/news/feature/2019/12/09/solving-water-management-crisis-india (last visited Dec. 1, 2021).

[7] *Id.*

[8] *Id.*

Several rivers criss-cross India's landmass, and this country has fourteen major inter-State rivers, which flow through the basin of one or more of its constituting States.[9] India also has forty-four medium rivers, of which nine are inter-State.[10] There is a fundamental difference between the North's river systems and those flowing in the peninsular and coastal regions. Apart from precipitation, the Himalayan glaciers feed the Northern rivers; many of the major ones originate and gain strength beyond India's national borders, and their flow is perennial.[11] However, with climate change and excessive anthropogenic interferences with rivers' ecosystems, perennials' idea quickly turns into a myth. These rivers are quickly becoming seasonal with fragmented and intermittent flows.[12] As far as the peninsular and coastal rivers are concerned, they depend solely on precipitation.[13] During the monsoons, they pass water in enormous quantities, part of which flows waste into the sea.[14] Once the monsoon ends, the water can drop to precipitously low levels, unable to support even basic human needs.[15] If the monsoons are erratic, the consequences become acutely catastrophic.[16] Thus, the low quantity of water in the Northern, peninsular, and coastal rivers is a grave concern. For not only can it turn the development clock back by several years, but it can also pit States against fellow States, potentially placing them on the warpath to tear up India's federal fabric.[17] Therefore, institutions and mechanisms that target water disputes' peaceful resolution are prerequisites for sustainable water resource development.

India's water federalism is at a crossroads. More than six decades have elapsed since its establishment, and, during this period,

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[9] Haris Jamil et al., *Interstate Water Dispute and Federalism: Governance of Interstate River Water in India* 2 CIV. & ENVTL. RES. 11 (2012).
[10] *Id.*
[11] GOV'T OF INDIA, MINISTRY OF WATER RESOURCES, NATIONAL WATER MISSION UNDER NATIONAL ACTION PLAN ON CLIMATE CHANGE I/4(2008) http://jalshakti-dowr.gov.in/sites/default/files/Mission_Doc_Vol22880755-143_0.pdf (noting that the annual run-off that India receives from its upper riparian neighbours is about 500 km^3).
[12] Umesh Kumar Singh & Balwant Kumar, *Climate Change Impacts on Hydrology and Water Resources of Indian River Basins* 13 CURRENT WORLD ENVT. 32 (2018).
[13] India-WRIS, River Info, https://indiawris.gov.in/wiki/doku.php?id=river_info (last visited Dec. 2, 2021).
[14] *Id.*
[15] *Id.*
[16] Ramesh Chand & S.S. Raju, *Dealing with Effects of Monsoon Failures*, ECON. & POL. WKLY., Oct. 2009 at 29.
[17] *See generally* Centre for the Advanced Study of India, University of Pennsylvania, *India in Transition*, https://casi.sas.upenn.edu/iit/scottmoore (last visited Dec. 26, 2021).

nine inter-State water disputes have been referred to the tribunals.[18] Presently, four out of these nine have attained a semblance of finality.[19] The remaining five continue to simmer, and water disputes between States are becoming more animated and highly volatile.[20] At the same time, over these years, the per capita water availability has fallen drastically. Presently, India is one of the world's most water-stressed countries[21] and is reeling from its worst water crisis in history.[22] This article provides an overview of the federal relations in water management and the related legislative apparatus that it engenders to resolve inter-State water disputes in India. It does so by setting the inquiry in terms of two questions: 1) should water be transferred from the State List in the Constitution to the Concurrent List for its better management? 2) Should India persist with the tribunal system, or should the judicial process at the Supreme Court level replace it? The first question assumes importance as India persists with the river linking project.[23] Breaking all conventional tenets of India's water federalism, the Supreme Court legitimized this highly controversial project and practically gave it the green light.[24] Since then, the Union Government has been pushing this project, slowly but surely.[25] The

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[18] *See generally* CENTRAL WATER COMMISSION, ANNEX-III http://cwc.gov.in/sites/default/files/Annex-III.pdf (last visited Dec. 26, 2021); *See infra* Table 1.

[19] *Id.*

[20] *See* Ambar Kumar Ghosh & Sayanangshu Modak, *Interstate river water disputes: Chasing Ambiguities, Finding Sense*, OBSERVER RESEARCHER FOUNDATION, (Oct. 15, 2020), https://www.orfonline.org/expert-speak/interstate-river-water-disputes-chasing-ambiguities-finding-sense/ (last visited Dec. 26, 2021).

[21] World Resources Institute, Updated Global Water Risk Atlas Reveals Top Water-Stressed Countries and States, https://www.wri.org/news/2019/08/release-updated-global-water-risk-atlas-reveals-top-water-stressed-countries-and-states (last visited Dec. 6, 2021) (noting that India, ranks #13 on Aqueduct's list of "extremely highly" water stressed countries).

[22] *See generally* NITI AYOG, COMPOSITE WATER MANAGEMENT INDEX (2019).

[23] MINISTRY OF JAL SHAKTI, DEPARTMENT OF WATER RESOURCES, RIVER DEVELOPMENT, & GANGA REJUVENATION, INTERLINKING OF RIVERS, http://jalshakti-dowr.gov.in/ (follow "Home" hyperlink; then search starting point field for "Policy/Schemes" and then "New Initiatives" and search destination field for "Interlinking of Rivers"); *See also* Ramaswamy R Iyer, *Interlinking of Rivers: A Plea to the Government*, ECON. & POL. WKLY., Dec. 2014, at 16; Anil Kumar Misra, et al. *Proposed River-linking Project of India: a boon or bane to nature* 51 *Environ Geol* 1361–1376 (2007); Shawkat Alam, *An Examination of the International Environmental Law Governing the Proposed Indian River-Linking Project and an Appraisal of Its Ecological and Socio-Economic Implications for Lower Riparian Countries*, 19 GEO. INT'L ENVTL. L. REV. 209 (2007).

[24] In Re: Networking of Rivers, (2012) 4 SCC 51.

[25] *See* NATIONAL WATER DEVELOPMENT AGENCY, NOTE ON INTERLINKING OF RIVERS PROJECTS IN THE COUNTRY: DETAILS AND STATUS http://nwda.gov.in/upload/uploadfiles/files/Note%20on%20interlinking.pdf (providing an overview of the inter-linking project) (last visited Dec. 5, 2021); *See also* NATIONAL WATER DEVELOPMENT AGENCY, ILR IN PARLIAMENT (last visited

second question is relevant because the Supreme Court has re-written the law on inter-state water dispute resolution.[26] More recently, the Union Government also sought to revamp the system through legislative amendments.[27]

In responding to these questions, this article is organized as follows. Part II sketches the evolution, nature, and practice of cooperative water federalism in terms of India's constitutional mandates. Part III deals with water tribunalization under the Inter-State River Water Disputes Act, 1956 (ISWRD Act). It also examines the workings of this system and explains how hydro-politics has hampered its efficiency. Based on the discussions in Parts II and III, Part IV analyses the two underpinning questions considering recent jurisprudence, legislative, and other developments. The article concludes in Part V by re-emphasizing the need to strengthen the nature of India's water federalism.

II. COOPERATIVE WATER FEDERALISM IN INDIA: EVOLUTION, NATURE, AND PRACTICE

In several ways, India's national regime's legal pedigree on inter-state river dispute resolution has roots in the ancient past. It evolved over the years through irrigation practices and related regulations.[28] More than two thousand years ago, the *Sakia* and *Kolia* Kings battled over, sharing the River Rohini's waters.[29] The ensuing conflict and bloodshed turned the river red. Finally, it was the Buddha who mediated to bring peace.[30] In ancient and medieval India, the physiographical characteristics of an area in which the irrigation work was situated determined the ensuing regulatory rules.[31] An elemental

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Dec. 5, 2021), http://nwda.gov.in/upload/uploadfiles/-files/ILR%20in%20Parliament.pdf.

[26] State of Karnataka v. State of Tamil Nadu, (2017) 3 SCC 362.

[27] Inter-State River Water Disputes (Amendment) Bill, 2019, Bill No. 187 of 2019 (July 15, 2019).

[28] *See generally,* Philippe Cullet & Joyeeta Gupta, *India: Evolution of Water Law and Policy,* in THE EVOLUTION OF THE LAW AND POLITICS OF WATER (Joseph W. Dellapenna & Joyeeta Gupta eds., 2008) [hereinafter Cullet & Gupta].

[29] DODDA SRINIVASA RAO, INTER-STATE WATER DISPUTES IN INDIA: CONSTITUTIONAL AND STATUTORY PROVISIONS AND SETTLEMENT MACHINERY (1998).

[30] *Id.*

[31] For instance, in the semi-arid and drought-prone areas in the South Indian States of Telangana, Andhra Pradesh, Karnataka and Tamil Nadu, the topography facilitated the development of tank irrigation. This, in its turn, saw the establishment of unique rules on tank management and irrigation. *See generally*, M.S. VANI, ROLE OF PANCHAYAT INSTITUTIONS IN IRRIGATION MANAGEMENT: LAW AND POLICY (TAMIL NADU AND KARNATAKA) (1992); P. Ishwara Bhat, Akhila Basalalli & Nayashree Bhogse, *Karnataka* in GROUNDWATER LAW AND MANAGEMENT IN INDIA:

principle in ancient India's water jurisprudence is that running water in rivers, streams, and watercourses was generally incapable of being private.[32] The idea of common property and rudiments of public trust were prevalent organizing themes.[33] The Kings, as part of their *Dharma*, were often regarded as trustees of these resources.[34] With colonialism, these predominant ideas underwent a sea change. Driven by economic greed, the British fashioned out new legal doctrines, which subjugated the customary rights hitherto enjoyed by the local communities over natural resources to their vested interests.[35] In line with Common Law principles, the laws on waters enacted during the British regime were also based on the principle that flowing water is a 'negative commodity' not susceptible to ownership.[36] There could be only the right to take and use the water (usufructuary rights), and only when water is withdrawn could that amount of water become property.[37] This ownership was temporary, extending only to the period of actual possession.[38] The colonial State also sought to displace all notions of water as common property, exercising control over this resource as a sovereign.[39] Over the years, several legislative initiatives lent a hand to fortify state sovereignty over water resources.[40] The impacts wrought by this colonial past persist even today.[41]

A primary reason why the British brought about these changes and began to exercise stranglehold control over the water resources was its economic interest in developing agriculture and, consequently,

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FROM AN ELITIST TO AN EGALITARIAN PARADIGM 203, 205-206 (Sarfaraz Ahmed Khan, Tony George Puthucherril & Sanu Rani Paul eds., 2021); Jasmine Joseph, *Tamil Nadu* in GROUNDWATER LAW AND MANAGEMENT IN INDIA: FROM AN ELITIST TO AN EGALITARIAN PARADIGM 281, 291-92 (Sarfaraz Ahmed Khan, Tony George Puthucherril & Sanu Rani Paul eds., 2021) (explaining the concept of *Kudimaramath* and recent attempts to revive the same).

[32] Tony George Puthucherril, *Riparianism in Indian Water Jurisprudence, in* WATER AND THE LAWS IN INDIA 97, 104 (Ramaswamy R. Iyer ed., 2011).

[33] *See* VANDANA SHIVA, WATER WARS: PRIVATIZATION, POLLUTION AND PROFIT 21-22 (2018) [hereinafter Shiva]; CHHATRAPATI SINGH, WATER RIGHTS AND PRINCIPLES OF WATER RESOURCES MANAGEMENT 76 (1991).

[34] Cullet & Gupta, *supra* note 28, at 158-161; Iqbal Ahmed Siddiqui, *History of Water Laws in India, in* WATER LAW IN INDIA 289, 290-295 (Chhatrapati Singh ed., 1992) [hereinafter Siddiqui].

[35] Cullet & Gupta, *supra* note 28, at 161-163; Siddiqui, *supra* note 34, at 295-306.

[36] Puthucherril, *supra* note 32, at 104.

[37] *Id.* at 114-115; *see also* ALICE JACOB & S.N. SINGH, LAW RELATING TO IRRIGATION 7 (1972) [hereinafter Jacob & Singh].

[38] *Id.*

[39] *Id.* at 122-125; Cullet & Gupta *supra* note 28, at 163-164.

[40] *See also*, Jacob & Singh, *supra* note 37, at 161-163.

[41] See, *e.g.*, The Kerala Irrigation and Water Conservation Act, 2003, § 3 (affirming that water courses and its water is government property).

increasing land revenue.[42] Modern irrigation in India received a real fillip with the British's arrival. Construction and control of works and sources of irrigation became a unique function and responsibility of British India's Government.[43] Moreover, the land had long been plagued by droughts and famines, which led the Famine Commissions to remark that, "among the means that may be adopted for giving India direct protection from famine . . . the first place must unquestionably be assigned to works of irrigation."[44] In this regard, the exploits of military engineers like Sir Arthur Thomas Cotton,[45] Colonel John Pennycuick,[46] John Colvin,[47] and Sir Proby Thomas Cautley[48] are the stuff of legend.

In the initial days, the British encouraged private enterprise in irrigation, however, its failure necessitated government intervention.[49] In 1866-67, specific far-reaching changes were affected, with irrigation becoming a central subject.[50] The construction of irrigation projects was to be undertaken by the government through its agencies.[51] This also partly explains why the British entrenched the idea of state sovereignty over water.[52] Irrespective of political boundaries between British India and the Princely States, the "optimum utilization" of river waters became the guiding principle.[53] In disputes between Provinces, these were resolved either by mutual

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[42] *See generally* Shiva, *supra* note 33, at 21-22 (detailing how the British dismantled community-based water management systems like the *Kudimaramath*); Aditya Ramesh, *Custom as Natural: Land, Water and Law in Colonial Madras*, 34 STUD. IN HIST. 29, 33 (2017) (pointing out how for investment in channelling water to the fields, the Government asserted proprietary rights over water and ensured separate returns from land).

[43] S.N. JAIN, ALICE JACOB & SUBHASH C. JAIN, INTERSTATE WATER DISPUTES IN INDIA: SUGGESTION FOR REFORM IN LAW, 2 (1971) [hereinafter Jacob & Jain].

[44] COMMISSION OF INQUIRY ON INDIAN FAMINES, I REPORT OF THE INDIAN FAMINE COMMISSION: FAMINE RELIEF 150 (1880).

[45] See Nahla Nainar, *The Anicuts of Sir Arthur Thomas Cotton*, THE HINDU, September 2, 2018.

[46] V. Shoba, *John Pennycuick: The Man who Changed the Course of the Periyar River*, THE NEW INDIAN EXPRESS, June 15, 2014.

[47] Joyce M. Brown, *Contributions of the British to Irrigation Engineering in Upper India in the Nineteenth Century,* 55 TRANSACTIONS OF THE NEWCOMEN SOCIETY 85, 98 (1983).

[48] *Id.*

[49] Patrick McGinn, *Capital, 'Development' and Canal Irrigation in Colonial India* 11-16 (Inst. of Social and Econ. Change, Working Paper No. 209, 2009), http://isec.ac.in/WP%20-%20209.pdf.

[50] *Id*.

[51] *Id*.

[52] See, *e.g.,* The North India Canal Drainage Act, 1873, § 5; The Madhya Pradesh Irrigation Act, 1931, § 26; *see also,* Jacob & Singh, *supra* note 37, at 7-14 (explaining the sovereign nature of rights enjoyed by the State over water).

[53] Jacob & Jain, *supra* note 43, at 3.

agreement or by the Secretary of State's orders, whose decision was final and binding.[54]

The Government of India Act, 1919, introduced dyarchy, and partial autonomy was granted to the provinces on a quasi-federal basis.[55] Certain essential changes were affected to the powers on water management. Henceforth, irrigation was to be a provincial but "reserved" subject.[56] Provincial governments could take up projects on an inter-state river provided the Secretary of State for India granted prior approval.[57] The Government of India Act, 1935, introduced more changes, including that irrigation became an exclusive provincial subject falling within the legislative competence of the provinces.[58] The central government's role was confined only to interstate disputes.[59] While each provincial government could do what it thought apposite to the water that flowed in its territory, which included even inter-state river waters that flowed through its boundaries, this right was circumscribed by Sections 130 to 133 of the Government of India Act, 1935.[60] Cumulatively, these changes provided that if a province lodged a formal complaint against another regarding interference with its water, and if the issues involved were of sufficient importance, the Governor-General could appoint a Commission to investigate the matter and submit a report.[61] This Commission was to consist of "persons having special knowledge and experience in irrigation engineering, administration, finance or law [and was] to make recommendations."[62] Based on this report, the Governor-General could pass final orders.[63] Against this decision, a reference lay before His-Majesty-in-Council.[64] In sum, no province could prejudicially distress another province's interests or that of its people in the waters. Since there was a perception that involving the judiciary and applying common law principles would prove counter-productive to the riparian interests, the Federal Court's or any other court's jurisdiction was barred.[65]

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[54] Haripriya Gundimeda & Charles W. Howe, *Interstate River Conflicts: Lessons from India and the US*, 33 WATER INT'L. 395, 396 (2008).
[55] *See*, M.P. SINGH, OUTLINES OF INDIAN LEGAL AND CONSTITUTIONAL HISTORY 166 (2003).
[56] Jacob & Jain, *supra* note 43, at 4.
[57] *Id.*
[58] Government of India Act (United Kingdom) 1935 (repealed Dec. 19, 1998), entry 19, list II of the Seventh sched.
[59] Jacob & Jain, *supra* note 43, at 4.
[60] Government of India Act (United Kingdom) 1935 (repealed Dec. 19, 1998), § 130-134 (Interference with Water Supplies).
[61] *Id*. at §131(1)
[62] *Id.*
[63] *Id.* at §131(5).
[64] *Id.* at §131(5), proviso.
[65] *Id.* at §133.

After independence and the Constitution's adoption, the federal arrangement necessitated an elaborate scheme for the division of legislative and executive powers between the two tiers of the Union and the State governments across the federal spectrum.[66] This federal spine is discernible from the three-fold distribution of legislative powers *via* the three lists in the seventh schedule to the Constitution, namely, the Union List (the exclusive domain of the Union Parliament), [67] the State List (exclusive to the States), [68] and the Concurrent List (joint responsibilities).[69] The first two lists are broadly based on the principle that while the Parliament must be empowered to legislate on matters involving national interest, States should have powers over issues that fall within their demarcated territory.[70] The Constitution also ensures that the Union and the States' executive powers are co-terminus with their legislative powers.[71] For the matters enumerated in the Concurrent List, both the Parliament and the State legislature have the power to make laws.[72] However, in case of a conflict between a law enacted by the Union Parliament and the State legislature, the Union law will displace the State law.[73] The Union Parliament has also been conferred the residuary power to legislate on any matter not enumerated either in the Union List, the State List, or in the Concurrent List.[74]

As the Constitution presently stands, powers over water are bestowed upon the Centre, the States, and the local bodies. However, given the significant variations in climatic and geographic conditions, hydrological diversity, rainfall, topography, crop pattern, the nature of aquifer systems, population growth, and demand, water policy development and implementation must necessarily occur at the State and at the local levels. Accordingly, the primary legislative entry on the water is Entry 17 of the State List, which reads, "[w]ater, 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." From the choice of words used and the overall tenor of this

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[66] LOUISE TILLIN, OXFORD INDIA SHORT INTRODUCTIONS: INDIAN FEDERALISM ch.1 (2019).
[67] India Const. seventh sched., list I.
[68] *Id.* at seventh sched., list II.
[69] *Id.* at seventh sched., list III.
[70] *Id.* at art 245; *Id.* at art. 246(1); *Id.* at art. 246(3).
[71] *Id.* at art. 73; *Id.* at art. 162.
[72] *Id.* at art. 246(2).
[73] *Id.* at art. 254(1).
[74] *Id.* at art. 248. *See also*, *Id.* at entry 97 of List I, seventh sched. The Constitution of India departs from the general practice seen in other federations. *See* U.S. CONST. amend. X; Constitution Act, 1867, 30 & 31 Vict., C3 (U.K.), reprinted in R.S.C. 1985, app II, no 5 (Can) at § 91; Australian Constitution s 107.

clause, it seems that water is viewed from a purely anthropocentric perspective, a resource to be developed and apportioned to satiate human needs. It ignores the life-sustaining qualities of water and its ecological significance. Nevertheless, by utilizing these powers, State legislatures have enacted legislation aplenty regulating different aspects of water use and its management — drinking,[75] irrigation,[76] reservoir construction and related displacement and rehabilitation,[77] water pollution, [78] groundwater management, [79] wetland conservation,[80] and dam safety.[81] Thus, under Entry 17, List II, clearly, the States have power over intra-state rivers and other water bodies.

Nevertheless, it is also constitutional for a State Government to exercise these powers to adopt legislative or executive measures over an inter-state river's waters that flow through its territory. However, this must not prejudicially affect another State's rights.[82] In fact, regarding inter-State rivers' flowing waters, the fundamental legal proposition, as explained earlier, continues to apply.[83] In other words, States do not have any proprietary right to any particular volume of water of an inter-state river either based on its contribution to the available flow or the drainage area.[84] As the Supreme Court categorically asserts, ". . . the waters of an inter-State river passing through the corridors of the riparian States constitute national asset and cannot be said to be located in any one State. Being in a state of flow, no State can claim exclusive ownership of such waters or assert a prescriptive right . . . to deprive other States of their equitable share."[85]

Notwithstanding these constitutional niceties, in actual practice, most states have unfortunately attempted to overstretch their Entry 17 competence over inter-state rivers. Unilateral action by one State in respect of inter-state river waters can result in the denial of water rights

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[75] *See, e.g.*, The Chennai Metropolitan Water Supply and Sewerage Act, 1978.
[76] *See, e.g.,* The Orissa Pani Panchayat Act, 2002.
[77] *See, e.g.*, The Maharashtra Project Affected Persons Rehabilitation Act, 1999.
[78] *See, e.g.*, The Water (Prevention and Control of Pollution) (Consent) Chhattisgarh Rules, 1975.
[79] *See, e.g.,* The Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005.
[80] *See, e.g.,* The Kerala Conservation of Paddy Land and Wetland Act, 2008.
[81] *See, e.g.,* The Kerala Irrigation and Water Conservation Act, 2003.
[82] GOV'T OF INDIA, NARMADA WATER DISPUTES TRIB., I REPORT OF THE NARMADA WATER DISPUTES TRIB. WITH ITS DECISION: IN THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE RIVER NARMADA AND THE RIVER VALLEY THEREOF BETWEEN 1. THE STATE OF GUJARAT 2. THE STATE OF MADHYA PRADESH 3. THE STATE OF MAHARASHTRA 4. THE STATE OF RAJASTHAN, at ¶ 8.2.9a (1979)[hereinafter I REPORT OF THE NARMADA WATER DISPUTES TRIB.].
[83] *See supra* notes 36–38, and accompanying text.
[84] I REPORT OF THE NARMADA WATER DISPUTES TRIB., *supra* note 82, at ¶ 8.8.1.
[85] State of Karnataka v. State of Tamil Nadu, MANU/SC/0126/2018, at ¶ 363.

to another State. Therefore, the Central Government has to have greater control over such waters to protect the national interest and ensure cooperative water federalism. Accordingly, the overwhelming power available to the States under Entry 17 is explicitly subject to a rider, namely, Entry 56 in the Union List, which enables the Union to deal with inter-State rivers if the Parliament of India legislates for the purpose.[86] Thus, as it stands, constitutionally, it is the Union Government that has the last say over inter-State river waters.

Apart from Entry 17, State List and Entry 56, Union List, several other entries in the Seventh Schedule bring into focus the dynamic nature of federal water relations. One such entry relates to the legislative and executive powers over economic and social planning, a Concurrent subject under Entry 20, List III.[87] As mentioned earlier, the Concurrent List is a joint domain where the central law will override the state law in case of a conflict.[88] Constitutionally, the Union Government can play a considerably important role that can potentially restrict the States' power to economically and socially plan for waters that flows through its territory. Under Article 282 of the Constitution, the Union Government has the discretionary power to provide grants for any public purpose, including grants to the State Governments for financing State plans. To access these grants for their projects, the State Governments must secure clearance from the concerned Central Government ministries.[89] The Union Government can withhold permission to new projects, particularly those on an inter-State river. Such actions may facilitate consensus amongst the disputant States regarding water distribution, lest the project languishes for lack of funds and requisite clearance from the Central Government.[90]

The constitutional scheme confers power on the States for the development and management of agriculture.[91] Since agriculture depends primarily on water, including river water, the state legislature, while enacting legislation for agriculture, may have the competency to provide for the regulation and development of water resources. This can include water supply measures, irrigation, canals, drainage and embankments, water storage, and water power; subjects that find mention in Entry 17. Accordingly, legislation enacted under Entry 14 in so far as it relates to inter-state river waters is also subject to the

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[86] India Const. entry 56 of list I & entry 17 of list II to sched. VII.
[87] *Id.* at entry 20 of List III to sched. VII.
[88] *Id.* at art. 254, cl. 1.
[89] R. Krishnaiah v. Union of India, MANU/AP/0520/1996, at ¶ 2.
[90] *See* State of Karnataka v. State of Andhra Pradesh, MANU/SC/0297/2000 at ¶ 69 (providing an overview of how the politics of clearances operated in relation to the Alamatti dam).
[91] India Const. entry 14, List II sched. VII.

restrictions imposed by Entry 56.[92] Similarly, Entry 18 of the State List deals with land improvement, among other things. This may empower the State legislature to enact legislation similar to those under Entries 14 and 17, also subject to the same restrictions.[93]

Perhaps the most significant limitation on the States' power over water relates to the Union's influence through the Constitution's environmental protection provisions. The inspiration of the 1972 Stockholm Conference on the Human Environment in India's environmental law was so profound that the Constitution itself was amended in 1976 to provide it with a green veneer.[94] Since then, India has developed a complex environmental regulatory regime that comprises several statutes and subordinate legislation that deal with the different facets of environmental protection. At the heart of this complex regulatory web is the Environment (Protection) Act, 1986 (EP Act).[95] The scope of this umbrella legislation is so broad that it has enabled the Central Government to engender environmental protection, including water conservation and management, through subordinate legislation.[96] An instance in point is establishing the "National Ganga River Basin Authority,"[97] a high-powered body chaired by the Prime Minister, which includes Union Ministers of relevant ministries and the concerned States' Chief Ministers.[98] This body's primary objective is to take all necessary measures for abating the pollution of the River Ganga, "India's lifeline," [99] in consonance with sustainable development principles. [100] Again, the Union Government placed reliance on the EP Act to create Ganga River Conservation Authorities at the State level.[101] There are two points worthy of note. First, the Union Government chose to create these high-powered authorities both at the national and, more importantly, at the State level (headed by the concerned States' Chief Ministers).[102] Even though, per se, the creation of authorities at the State level by the Union may seem to be

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[92] Ramaswamy R. Iyer, *Indian Federalism and Water Resources,* 10 INT'L. J. OF WATER RES. DEV.,191, 192. (1994).
[93] India Const. entry 18, list II, sched. VII.
[94] India Const. art. 48-A, art. 51-A (g), Entry 17-A & Entry 17-B, list III, sched. VII.
[95] The Environment (Protection) Act, 1986, pmbl. (seeking to implement the decisions taken at the 1972 Stockholm United Nations Conference on the Human Environment in which India participated).
[96] *See* ARMIN ROSENCRANZ & SHYAM DIWAN, ENVIRONMENTAL LAW AND POLICY IN INDIA: CASES, MATERIALS AND STATUTES 66-86 (2d ed. 2002).
[97] Ministry of Environment and Forests, National Ganga Basin Authority, S.O. 521(E) (Notified on February 20, 2009).
[98] *Id*. at Rule 3.
[99] MINISTRY OF JAL SHAKTI, GOVERNMENT OF INDIA, *supra* note 5, at 28.
[100] *Id*. opening recital.
[101] *See, e.g.,* Ministry of Environment and Forests, Uttar Pradesh State Ganga River Conservation Authority, S.O. 2493(E) (Notified on September 30, 2009).
[102] *Supra* notes 97–101, and accompanying text.

a transgression into State powers, it may be justified because the Ganges is an inter-state river that cuts across several States' territories. Second, the Union Government initially chose to create the institutional frame to abate the Ganges' pollution and conserve the river primarily through the Ministry of Environment & Forests rather than the Ministry of Water Resources.[103] Here, the sweeping powers of delegated legislation under the EP Act facilitated its accomplishment. By doing so, the Union Government chose to ignore the River Boards Act, 1956,[104] under which it could have created a River Basin Organization for the Ganges. Alternatively, the Union could have enacted independent legislation under Entry 56 of List I or relied on its residuary powers to push in a new law. The latter courses of action would require the Parliament's approval, an entry into the political thicket, and greater public scrutiny. Subsequently, the Union, by again exercising the powers under the EP Act and in supersession of the earlier Notification initiated under the Ministry of Environment and Forests, brought out a new Notification. This time the new Notification was brought out by the Ministry of Water Resources, River Development, and Ganga Rejuvenation, which recast the "National Ganga River Basin Authority" and brought it under its ambit.[105] Thus, using the sweeping powers under the EP Act, the Central Government has been able to ensure a decisive water management response. However, it may have come at the cost of circumventing the constitutional, statutory, and federal arrangements.

One of the most significant subordinate legislation under the EP Act is the Environmental Impact Assessment Notification, 2006 (EIA).[106] The EIA Notification subjects new projects, including water-related ones, to a rigorous evaluation process from an environmental standpoint before its commissioning. The EIA Regulations envisage

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[103] *Id*.

[104] The River Boards Act, 1956, (providing for the establishment of River Boards, for regulating and developing inter-State rivers and river valleys). The River Boards Act, 1956 has remained a dead letter as no River Board or River Basin Organization has been constituted under this statute. Nevertheless, certain organizations and Boards have been created. *E.g.,* the Brahmaputra Board, which has jurisdiction over the Brahmaputra and the Barak Valley extending to all the North-Eastern States, Sikkim and portions of West Bengal that fall under Brahmaputra basin has been created under a union statute, namely, the Brahmaputra Board Act, 1980. Similarly, the Betwa River Board, 1976 established the Betwa River Board.

[105] Ministry of Water Resources, River Development and Ganga Rejuvenation, S.O. 2539 (E) (Issued on Sept. 29, 2014) (superceeding S.O. 521(E) issued by the Ministry of Environment and Forests).

[106] Ministry of Environment & Forests, The Environment Impact Assessment Notification, 2006, S.O. 1533 (Notified on Sept 14, 2006); Ministry of Environment, Forests and Climate Change, The Environment Impact Assessment Notification, 2020, S.O. 1199(E) (Notified on March 23, 2020) (seeking to supersede all the earlier relevant Notifications).

environmental clearances in four stages, depending upon how a project is categorized, namely — (a) screening, (b) scoping, (c) public consultation, and (d) appraisal.[107] In evaluating the environmental impacts of a project on an inter-state river, State boundaries are irrelevant. The impact assessment agencies will assess all effects, both within and beyond, to understand a project's environmental impacts on a neighbouring State's environment. Again, under the EIA regulations, river valley projects that involve fifty or more megawatts of hydroelectric power generation or 10,000 hectares of culturable command area require environmental clearance from the Union Ministry of Environment and Forests.[108]

The Water (Prevention and Control of Pollution) Act, 1974 (Water Act) represents India's first attempt to deal with environmental issues, namely, water pollution, comprehensively. Its objective is to provide for the prevention and control of water pollution and the maintenance or restoration of water's wholesomeness by establishing Water Boards to secure its effective implementation.[109] Since water is a state subject, this central legislation was enacted under Article 252 (1) of the Constitution, which adds another layer of complexity and dynamism to India's water federalism. This article empowers the Union Government to legislate in a field reserved for the States when two or more State Legislatures consent to a Central Law and pass resolutions to this effect. Nearly eleven States passed resolutions seeking central legislation on water pollution, which led to the Water Act, 1974. More recently, the Union Government has proposed a law on dam safety that provides uniform safety procedures and protocols for all dams. It also draws its constitutional sustenance to Article 252 (1) and the resolutions passed by the Legislative Assemblies of undivided Andhra Pradesh and West Bengal in 2007, empowering the Union Parliament to enact the Dam Safety Act. Once the Union Parliament passes this law, it will in the first instance apply to both these States and, after that, to other States who may subsequently adopt this law.[110]

Another crucial legislative mechanism that significantly curtails the State Governments' power over Entry 17 water

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[107] Ministry of Environment & Forests, The Environment Impact Assessment Notification, 2006, S.O. 1533 (Notified on Sept 14, 2006) at Rule 7.
[108] *See* Rule 2 and Category 'A' in the sched. *See* also *Athirappally Grama Panchayat v. Union of India*, HC of Kerala, judgement dated 23 March, 2006 in W.P.(C) Nos. 9542, 11254 & 260763 of 2005.
[109] *See* The Water (Prevention and Control of Pollution) Act, 1974, pmbl.
[110] *See also* Dam Safety Bill, 2019, Bill No. 190 of 2019, Statement of Objects and Reasons (July 22, 2019).

management is the Forest (Conservation) Act, 1980.[111] A brief legislative document that consists of only five provisions, it traces its origin to Entry 17A of List III of the Constitution.[112] Despite its brevity, this law has revolutionized forest management. The most potent provision is section 2. It provides that except with the Union's Government's prior approval, a State Government cannot order forest land use for any non-forest purpose.[113] Accordingly, if a State decides to construct a hydropower project that involves the clearance or conversion of forest land, permission must be obtained from the Union Government. Thus, by employing environmental protection-related laws, the Union Government can effectively proscribe a States' power from developing water under Entry 17 of List II by requiring that such proposals obtain prior clearance from the Union Government.[114]

Three major river systems, namely, the Ganges, the Brahmaputra, and the Indus, originate in Tibet, China. They flow into India, cross its international borders, and enter Bangladesh and Pakistan, respectively. As a mid-riparian State, which relies heavily on these waters, India has entered into bilateral water-sharing agreements with Pakistan, Bangladesh, and Nepal and memorandums of understanding with China.[115] In matters relating to hydro-diplomacy, essentially, the Union deals with and manages a resource that flows through the States and is utilized by the people living in that State. When floods occur, or the rivers run dry, States are directly affected. This requires enhanced coordination between the countries, and sometimes it may even require the concerned State's participation.[116] However, under India's constitutional scheme, only the Central Government plays a pivotal role in addressing international water-sharing issues. The legal basis is traceable to Entries 10 and 14 of the Union List in the Seventh Schedule and Article 253, which confer general powers on the Centre to conduct foreign relations, enter into

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[111] The Forest (Conservation) Act, 1980 (providing for the conservation of forests and related matters).

[112] India Const. entry 17A, List III, Sched. VII.

[113] The Forest (Conservation) Act, 1980. Explanation to §2 provides that "non-forest purpose" does not include any work relating or ancillary to conservation, development and management of forests and wildlife, like the establishment of dams. *Id*.

[114] *See* State of Karnataka v. State of Andhra Pradesh, MANU/SC/0297/2000, at ¶¶ 60 & 61 (directing Karnataka to obtain all the clearances under the different statutes including the Environment (Protection) Act, 1986, to construct the Alamatti dam to a height of FRL 519 metres).

[115] Salman M.A. Salman & Kishor Uprety, SHARED WATERCOURSES AND WATER SECURITY IN SOUTH ASIA: CHALLENGES OF NEGOTIATING AND ENFORCING TREATIES 10-73 (2018).

[116] COMMISSION ON CENTRE-STATE RELATIONS, VI ENVIRONMENT, NATURAL RESOURCES AND INFRASTRUCTURE 36 (2010), http://interstatecouncil.nic.in/report-of-the-commission-on-centre-state-relations/.

treaties and agreements and enact legislation to effectuate international agreements.[117] Nevertheless, in terms of realpolitik, certain States have exercised a significant say in international water diplomacy compared to others.[118] In concluding the Ganges Treaty of 1996 with Bangladesh, West Bengal was closely associated with the process, while Bihar was not.[119] Again concerning the Teesta River, a water-sharing agreement with Bangladesh has been in the works for more than a decade. However, there has been very little progress. Opposition by the State of West Bengal prevented the materialization of the water-sharing agreement.[120]

A constitutional dimension of far-reaching import that has helped facilitate decentralization, which also has its resonance in water management, is the 73rd and 74th constitutional amendments.[121] Even though these amendments did not confer any legislative powers to the local self-government institutions, it calls upon the States to devolve executive power to these bodies through laws over matters specified in Eleventh and Twelfth Schedules.[122] Such laws can devolve powers and responsibilities for implementing schemes, including those relating to water. Of relevance in the Eleventh Schedule is minor irrigation,[123] water management, and watershed development,[124] fisheries,[125] and agriculture.[126] The Twelfth Schedule specifies water supply for domestic, industrial and commercial purposes,[127] urban planning and town planning,[128] urban forestry,[129] and slum improvement.[130] States have enacted legislation or amended existing legislation to provide panchayats and municipalities considerable powers and

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[117] India Const. seventh sched., list I, Entry 10 "Foreign affairs; all matters which bring the Union into relation with any foreign country" and Entry 14 "Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries." *See also Id.* at article 253 which reads ". . . Parliament has power to make any law . . . for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

[118] COMMISSION ON CENTRE-STATE RELATIONS, *supra* note 116, at 36.

[119] *Id.* at 35-36.

[120] Salman & Uprety, *supra* note 115, at 66-67.

[121] Kamala Sankaran, *Water in India: Constitutional Perspectives* in WATER AND THE LAWS IN INDIA Ramaswamy R. Iyer, SAGE (2009)17, 23.

[122] India Const. art. 40.

[123] *Id.* at Entry 3, Eleventh sched.

[124] *Id*.

[125] *Id.* at Entry 5, Eleventh sched.

[126] *Id.* at Entry 1, Eleventh sched.

[127] *Id.* at Entry 5, Twelfth sched.

[128] *Id.* at Entry 1, Twelfth sched.

[129] *Id.* at Entry 8, Twelfth sched.

[130] *Id.* at Entry 10, Twelfth sched.

responsibilities relating to water provisioning services and their management.[131]

In addition to the constitutional framework, judicial decisions at the Supreme Court level have also affected federal water relations. In 1996, the Supreme Court noticed a news item, "Falling Groundwater Level Threatens City," and directed the Central Government to constitute the Central Ground Water Board as an Authority under the EP Act and exercise powers under this law to regulate indiscriminate groundwater extraction. [132] Since then, this Authority has been issuing 'No Objection Certificates' for groundwater extraction by industries, infrastructure, and mining projects. It has also framed guidelines to apply to States and Union territories, where groundwater development is unregulated.[133]

As mentioned in the introduction, rivers' interlinking as a "network [of] various rivers to deal with the paradoxical situation of floods in one part of the country and droughts in other parts"[134] is mooted as a plausible solution to the water crisis. The interlinking project seeks to rectify the temporal and spatial variations in water availability through civil engineering and may warrant a substantial re-write of India's water federalism. The project's genesis is traceable to Sir Arthur Cotton, who visualized a navigational canal connecting the river Indus to the Yamuna and the Ganges.[135] Since then, at regular intervals, this idea has cropped up. However, no concrete measures beyond the drawing board were adopted. In 2002, a passing observation by the then President of India, A.P.J. Abdul Kalam, relit the interlinking plan. [136] It saw the Supreme Court's involvement, which issued notices to the Centre and the States, eliciting their views.[137] Only the Central Government and the State of Tamil Nadu responded; both endorsed the initiative.[138] The absence of a response from the other States did not deter the apex court, which held that their silence could be construed as approval. This order formed the basis on which the Central Government set up a high-powered Task Force to build national consensus, work out detailed plans, and complete the project by 2016.[139]

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[131] *See, e.g.,* Guwahati Metropolitan Drinking Water & Sewerage Board Act, 2009.
[132] M.C. Mehta v. Union of India, (1997) 11 SCC 312.
[133] Ministry of Water Resources, River Development and Ganga Rejuvenation S.O. 6140(E) (December 12, 2018).
[134] In Re: Networking of Rivers, (2012) 4 SCC 51 ¶ 6.
[135] *See* RAMASWAMY R. IYER, WATER: PERSPECTIVES, ISSUES AND CONCERNS 312 (2003).
[136] In Re: Networking of Rivers, (2012) 4 SCC 51 at ¶ 6.
[137] *Id.* at ¶ 7.
[138] *Id.* at ¶ 16.
[139] *Id.* at ¶ 19.

Even though the Task Force prepared feasibility reports for sixteen links, matters went into hibernation. This forced the Supreme Court to intervene again to set the ball in motion.[140] To implement this project, the Court emphasized coordination, mutuality, and consensus between the Centre and the States and between the States *inter se*.[141] All the same, it goaded the States to support the project, and it sent a stern message when it held that "national interest must take precedence over the interest of individual States."[142] "The State Governments are expected to view national problems with greater objectivity, rationality, and spirit of service to the nation. [I]ll-founded objections may result in greater harm . . . to the nation at large."[143] Reference was made to the Central Government's residuary powers under the Constitution, which could provide the necessary legal springboard for the project.[144]

In a candid admission, the Court expressly acknowledged that it could not create policy.[145] However, in a U-turn, the Court went ahead and directed the Union to create a 'Special Committee for Inter-linking of Rivers,' it specified its composition, laid down its functions, and imposed responsibility on this body to carry out the inter-linking program. The Court digressed, and it practically created 'policy.'[146] To add further legal brawn to this 'policy creation,' the Supreme Court backed it up with a mandamus to the Central and the State Governments directing them to comply with the directions contained in the judgment "effectively, expeditiously and without default."[147] In sum, this Supreme Court judgment was more or less akin to the magical act of pulling the rabbit out of the hat. This judgment's constitutional foundations are in serious doubt, for it effectively side-steps the constitutional tenets on water federalism and creates an alternative trajectory that effectively centralizes water, erecting a new launchpad for the river linking project. Interestingly, the Supreme Court even began contempt proceedings against the Union to ensure that it acted upon the judgment.[148] By then, the judgment received the Union's support, which issued an official notification in 2014, giving it full effect.[149]

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[140] *Id*.
[141] *Id.* at ¶ 62.
[142] *Id*. at ¶ 65.
[143] *Id*.
[144] *Id*. at ¶ 70.
[145] *Id*. at ¶ 74.
[146] *Id*. at ¶ 77.
[147] *Id*. at ¶ 79.
[148] Networking of Rivers, In Re v. Alok Rawat, (2015) 12 SCC 447.
[149] Ministry of Water Resources, River Development and Ganga Rejuvenation, Special Committee for Inter-linking of Rivers, F. No. 2/15/2014-BM (Issued on September 23, 2014).

From the above two cases, it can be discerned that the Court was practically erecting new legal foundations for water management. In the former, the Supreme Court endorsed the possibility of utilizing the broad powers of delegated legislation available to the Central Government under the EP Act to regulate water. The latter practically pushed to the center-stage, a project whose credibility to resolve India's water woes is mostly doubted.[150] It took recourse not to existing constitutional and statutory tenets but by utilizing its constitutional status and powers available as the apex in India's judicial hierarchy, whose decisions are the law of the land to create and push water policies.

As part of effectuating cooperative water federalism, the Constitution also spells out the procedure for inter-state water dispute resolution. While disputes between the constituting units of the federation are subject to the Supreme Court of India's original jurisdiction under Article 131, inter-state water disputes are excluded from its ambit. Due to their unique nature, these disputes are brought to an entirely different constitutional procedure, discussed below.

At the time of India's Constitution's framing, it was believed that water disputes would be rare. Consequently, Articles 239 to 242 were incorporated into the Draft Constitution under the heading "Interference with Water Supplies."[151] These articles were in substance *in pari materia* with sections 130 to 133 of the Government of India Act, 1935. The emphasis was on presidential action. However, as an afterthought, Dr. B.R. Ambedkar, the Chairman of the Constitution Drafting Committee, proposed that Articles 239 to 242 be replaced with Article 242-A as he felt that "the original draft or proposal was too . . . stereo-typed to allow any elastic action that may be necessary" to respond to the possibility of an increase in water disputes in the event of full exploitation of inter-state rivers in independent India.[152] The new Article 242-A empowered the

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[150] Jacob Koshy & Samarth Bansal, *The Hindu Interlinking of Rivers: An Idea with Flaws*, THE HINDU, May 7, 2016; SOUTH ASIA NETWORK ON DAMS, RIVERS & PEOPLE, THE MINDLESSNESS CALLED RIVER LINKING PROPOSALS (2003) https://sandrp.files.wordpress.com/2018/03/ilrprpsl.pdf.

[151] *See* Text of the Draft Constitution of India, 1948, Constitution of India: Read, Search, Learn and Explore, https://www.constitutionofindia.net/ (follow "Menu" hyperlink; then search "Historical Constitutions"; *See also* K.K. LAHIRI, INTER-STATE RIVER WATER DISPUTES ACT: GENESIS, EVOLUTION AND ANALYSIS 45 (2016).

[152] IX CONSTITUENT ASSEMBLY OF INDIA DEBATES (Proceedings, September 9, 1949), https://www.constitutionofindia.net/ follow "Menu" hyperlink; then search starting point field for "Constituent Assembly" and search "The Debates" then "Volume 9" and search "September 9, 1949"; LAHIRI, *supra* note 151, at 48; *See*

Parliament to provide, by law, the adjudication of any dispute or complaint concerning the use, distribution, or control of the waters of, or in, any inter-state river or river valley.[153] It also sought to exclude such disputes or complaints from the Supreme Court's or that of any other court's jurisdiction. The proposed change was accepted, and in the revised draft, the article was renumbered as Article 262.[154] It was put to the vote and was adopted by the Constituent Assembly. In the final text of the Constitution, Article 262 (Article 242-A), is situated under Part XI of the Constitution that deals with "Relations between the Union and the States" and specifically, in Chapter II of Part XI, that deals with "Administrative Relations."

The chapeau of Article 262 reveals two clauses. Article 262 (1) provides that Parliament may, by law, provide for the adjudication of any dispute or complaint concerning the use, distribution, or control of the waters of, or in, any inter-state river or river valley. In other words, the adjudication of disputes relating to waters of inter-State rivers or river valleys must be per the terms of a law made by the Union Parliament. Article 262 (2) begins with a non-obstante clause. It states that notwithstanding anything contained in the Constitution, the Parliament may by law exclude the adjudication by the Supreme Court or any other court of any "dispute or complaint concerning the use, distribution or control of the waters, or of in any inter-state river or river valley."

On a conjoint reading of the provisions, the fundamental postulate that underlies Article 262 is that, but for the restriction that it imposes, any State Government would have been free to adopt legislative or executive measures in respect of the waters of an inter-state river even if this would prejudicially affect the rights of another riparian State or that of its inhabitants in these waters.[155] Article 262 is probably the only provision in the Constitution that enables the Parliament to oust and exclude all courts' jurisdiction, including that of the Supreme Court. Article 262 is also not self-executable; instead, it is an enabling provision that empowers the Parliament to enact a law that provides for the adjudication of such disputes, excluding all courts' jurisdiction, including that of the Supreme Court.

A. Discussion

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also V. Ramaswami, *Law Relating to Equitable Apportionment of The Waters of Interstate Rivers in India*, 20 J. OF THE IND. L. INS., 505, 509 (1978) JSTOR 43950551.

[153] LAHIRI, *supra* note 151, at 49.

[154] *Id*.

[155] I REPORT OF THE NARMADA WATER DISPUTES TRIB., *supra* note 82, at ¶ 8.2.9.

A genuine conception of a federal state contemplates the distribution of legislative and executive powers between a central authority and its constituent units. During the pre-independence days, the general understanding was once India's independence became a reality; the provinces would enjoy more powers. However, the process of unification of the more than 500 odd princely States, the partition, and the horrific events that followed in its aftermath left an indelible imprint in the Constituent Assembly's mind.[156] Consequently, in several of the constitutional provisions, including the scheme relating to the distribution of legislative powers, one sees that even though there is state autonomy, the power-sharing devices are subordinated to the imperatives of national security and stability, and there is an emphasis on centralization.[157] In this sense, even though India's polity mirrors the federal spirit, it is a semi-federal or a quasi-federal system.[158] This is because while India might be federal in structure, it is unitary in its character. India's Constitution contemplates a federation based on a strong centralized centripetal system, where there is a significant unitary tilt. This nature of India's federal system is mirrored in its water federalism as well. Under Entry 17 of List II, the States are provided with sufficient autonomy for water management. However, this power is circumscribed by Entry 56 of List I, which relates to inter-state river waters. Moreover, with time, additional hedges were erected by the Constitution's environmental, forest conservation, and planning-related provisions, which enable the Union to control the development of both inter-and intra- state rivers. However, the last nail in the coffin, so to speak, for India's water federalism is from the Supreme Court judgement directing the Special Committee's establishment for inter-linking rivers. The judgement flies in the face of the existing schema relating to the division of powers over water and practically centralizes its management.

Another essential feature of federalism is that generally, there are a complex set of institutions and processes to resolve disputes that may emanate between the federation's constituting segments to ensure that all faithfully observe the Constitution in both letter and spirit.[159] Of course, India is not a pure federal State. Nonetheless, in India's quasi-federal scheme, the Supreme Court has a predominant role in adjudicating such disputes. The Supreme Court has original jurisdiction (article 131) concerning disputes between the constituting units of India's federation. However, given the unique and sensitive nature of inter-state water disputes, which may not be judicially

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[156] S.R. Bommai v. Union of India, (1994) 3SCC 1, ¶ 21.
[157] *Id*.
[158] *Id.* at ¶ 24.
[159] MARK J. ROZELL & CLYDE WILCOX, FEDERALISM: A VERY SHORT INTRODUCTION 31 (2019).

reviewable by employing traditional judicial review standards, in a marked departure from the general scheme found in federal constitutions where the highest Court of the land as part of its original jurisdiction is endowed with the responsibility to adjudicate disputes, including inter-state water disputes, India's Constitution, *via*, Article 262 has excluded these from its jurisdictional purview.[160] It was deemed proper and appropriate that such issues be determined as per a law made by Parliament to adjudicate such conflicts.[161] The intention of the framers of the Constitution was conspicuous and unmistakable, and this is perhaps the most striking feature of India's water federalism.

III. TRIBUNALIZING WATER JUSTICE OR THE CAULDRON OF WATER CONFLICTS?

Based on Article 262, the Union Parliament enacted the Inter-State River Water Disputes Act, 1956 (ISRWD Act).[162] This law provides a normative framework to address disputes relating to the waters of inter-state rivers and river valleys by establishing tribunals to adjudicate disputes where negotiations fail. The discussion below summarizes this statute's core provisions and will explain some of the changes effected by it over the years and the reasons. It will also explore the workings of the tribunal system in terms of the various inter-state water disputes.

The starting point is the definition of the term water dispute. It is defined as "any dispute or difference between two or more State Governments [concerning] the use, distribution or control of the waters of, or in, any inter-state river or river valley."[163] Such disputes also include conflicts relating to the interpretation or implementation of inter-state river water sharing agreements and treaties and disputes over water cess.[164] The adjudicatory process is triggered when a State Government believes that a water dispute with another State that may prejudicially affect its interests or its residents has arisen or is likely to arise. It can then request the Central Government to refer this water

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[160] India Const. art. 262, cl. 2.
[161] *Id*.
[162] Initially, the Act was entitled as "The Inter-State Water Disputes Act, 1956". By virtue of the Amendment in 2002, the Act was re-titled as "The Inter-State River Water Disputes Act, 1956."
[163] Inter-State River Water Disputes Act, 1956, § 2 (c) (i).
[164] *Id*. at § 2 (c) (ii) (iii).

dispute to a Tribunal for adjudication.[165] Only the State Governments and not its inhabitants have the *locus standi* to initiate this process.[166]

On receipt of such a request and if the Central Government believes that negotiations cannot settle, it constitutes a water disputes tribunal.[167] The Central Government has to refer the water dispute and related matters to the Tribunal within one year from receiving the request.[168] As it originally stood, the law did not specify any time limit. It was on the basis of the Sarkaria Commission's recommendations that the Act was amended to prescribe a year.[169] Once a Tribunal is constituted, and the water dispute is referred to it, it assumes jurisdiction over the entire surface and underground water in the river basin.

The water tribunal consists of a Chairman and two other members nominated by India's Chief Justice from Supreme Court or High Court judges.[170] Initially, the law provided for a single-member tribunal nominated by the Chief Justice of India.[171] The Tribunal was to be assisted by two or more assessors to render it advice.[172] The Tribunal appointed these assessors.[173] In 1968, the Act was amended to enlarge the Tribunal and provide it with its present composition. Later by the 2002 amendment, the power of appointing assessors was taken away from the Tribunal and was vested with the Central Government.[174]

Even though not expressly stated in the statute, it is now established law that the Tribunal can grant interim relief. [175] The Tribunal investigates the issues and forwards a report to the Central

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[165] *Id*. at § 4 (vesting power upon the Central Government to set up a Tribunal, conditional upon forming the requisite opinion).
[166] Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimal Padhugappu Sangam v. Union of India, (1990) 3 SCC 440; Atma Linga Reddy v. Union of India, MANU/SC/2898/2008.
[167] Inter-State River Water Disputes Act, 1956, § 4(1).
[168] *Id*.
[169] Chapter XVII, *Inter-State River Water Disputes.* in, REPORT OF THE SARKARIA COMMISSION, ¶ 17.4.11 http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ (last visited Dec. 5, 2021) [hereinafter SARKARIA COMMISSION].
[170] Inter-State River Water Disputes Act, 1956, § 4(2).
[171] LAHIRI, *supra* note 151, at 236.
[172] *Id*.
[173] The Inter-State Water Disputes Act, 1956, § 4(3).
[174] The Inter-State Water Disputes (Amendment) Act, 2002, § 3(b).
[175] State of Tamil Nadu v. State of Karnataka, MANU/SC/0643/1991 (holding that when the Central Government referred the Cauvery dispute to the Tribunal for determination, this reference included within its ambit, the issue of granting interim relief).

Government, setting out the facts and its decision.[176] If there are differences of opinion amongst the Tribunal members, the same is decided according to the majority.[177] The report must be forwarded within three years.[178] If unable to stick to this time frame for unavoidable reasons, the Central Government can grant an extension of time for a period not exceeding two years.[179]

On consideration of the Tribunal's decision, if the Central Government or any State Government opines that the report requires further explanation or that guidance is needed on any point not originally referred to the Tribunal, the matter may be referred to the Tribunal for further consideration within three months from the date of the decision.[180] The Tribunal may then forward an additional report to the Central Government within a year, giving such an explanation or guidance as it deems fit.[181] In such cases, the Tribunal's original decision is deemed modified.[182] The Central Government may extend this time frame for such a further period as it considers necessary.[183] However, if the Central Government is satisfied that there is no need for further reference, it then disbands the Tribunal.[184]

The Tribunal can regulate its practice and procedure,[185] and it is also endowed with the powers of a civil court regarding certain matters to facilitate its efficient functioning.[186] Besides, it can require any State Government to carry out surveys and studies to facilitate the pending adjudication.[187] Another essential feature of this law is that it obligates the Central Government to create a data bank and an information system at the national level.[188] This data bank maintains information regarding each river basin, including details about water resources, land, and agriculture. The State Governments must supply the data, and the Central Government can scrutinize it.[189]

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[176] The Inter-State Water Disputes Act, 1956, § 5(2).
[177] *Id.* at § 5(4).
[178] *Id.* at § 5(2).
[179] *Id.* at § 5(2) Proviso.
[180] *Id.* at § 5(3).
[181] *Id.* at § 5(3).
[182] *Id.* at § 5(3).
[183] *Id.* at § 5(3) Proviso.
[184] *Id.* at § 12.
[185] *Id.* at § 9 (4).
[186] *Id.* at § 9(1).
[187] *Id.* at § 9(2).
[188] *Id.* at § 9A.
[189] *Id.* at § 9A.

The Tribunal's decision is final and binding on the parties to the dispute, and they must give it effect.[190] Furthermore, the Central Government should publish it, and after that, it has the same force as an order or decree of the Supreme Court.[191] The Central Government can frame schemes to give effect to a Tribunal's decision.[192] A scheme thus framed may *inter alia* provide for an authority to implement the decision or directions of the Tribunal.[193] The Central Government can add to, amend, or vary any such schemes.[194]

Section 11 excludes the Supreme Court's jurisdiction and that of any other court to decide inter-state water disputes. Section 11 of the statute mirrors the mandate of Article 262(2) of the Constitution. Nevertheless, in practice, excluding the Courts' jurisdiction under Article 262 and section 11 of the ISRWD Act has been only partial. The Supreme Court of India has found ways to intervene by bringing the matter under its original jurisdiction or its appellate jurisdiction. For instance, as previously stated, a Tribunal has jurisdiction only over water disputes. Thus, determining what constitutes a water dispute becomes extremely important from the standpoint of whether the Tribunal can exercise jurisdiction or not. In Mullaperiyar Environmental Protection Forum, the Supreme Court characterized the dispute as involving the safety of a "geriatric dam" rather than as one between two states over water, even though the safety aspect was intrinsically linked to the question of increasing the water level in the dam. [195] In the dispute between Haryana and Punjab, [196] a moot question before the Supreme Court was whether the SYL Canal's digging was a water dispute under Section 2(c) of the ISRWD Act, 1956. Punjab opposed the suit instituted by Haryana under the Supreme Court's original jurisdiction under article 131 by relying on article 262 and section 11 of the ISRWD Act, 1956.[197] The Supreme Court repelled Punjab's contention and held that the SYL Canal construction had no connection with water sharing between the States,[198] and therefore, it was not a water dispute under section 2(c). The suit could not be barred. As the Supreme Court observed, ". . . the . . . SYL Canal is . . . for . . . utilizing the water . . . already . . . allotted to . . . Haryana and consequently, cannot be construed to be . . . inter-linked with the distribution or control of water of, or in any inter-

[190] *Id.* at § 6(1).
[191] *Id.* at § 6(2).
[192] *Id.* at § 6A.
[193] *Id.* at § 6A (2).
[194] *Id.* at § 6A (5).
[195] Mullaperiyar Environmental Protection Forum v. Union of India, (2006) 3 SCC 643.
[196] State of Haryana vs. State of Punjab, MANU/SC/0026/2002.
[197] *Id*. at ¶ 4.
[198] *Id*. at ¶ 15.

State river . . ."[199] This is when the canal's completion is the sine qua non if non-riparian Haryana is ever to enjoy its legitimate water rights. Thus, through a process of ingenious interpretation, the Supreme Court has managed to exercise its sway over such disputes.[200]

In the initial years, the system relating to the tribunalization of water justice functioned well. In due course, difficulties began to emerge. A point of concern was the long-winding nature of such disputes and the tribunals' inability to find a solution within specific time-frames. The lack of the spirit of giving and taking between the States was also an issue. Below an overview is provided of the tribunal system's workings.

A. The Narmada Water Dispute

The Narmada is the largest West flowing river in India.[201] Originating in Madhya Pradesh (MP), it flows westwards through MP, Maharashtra, and Gujarat for over 1312 kms. before draining into the Gulf of Cambay.[202] Under the auspices of the Union, the Bhopal Agreement was developed in 1963.[203] However, MP refused to ratify it.[204] Later, the Union Government constituted a High-Level Committee of engineers headed by Dr. A.N. Khosla, which submitted a Master Plan for the Narmada water development.[205] Disagreements persisted, and finally, in 1968, Gujarat complained to the Government of India under the ISRWD Act.[206]

A Tribunal headed by Justice V. Ramaswami, a retired Supreme Court Judge, was constituted, and the water dispute was referred to it.[207] The Central Government also referred to the Tribunal,

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[199] *Id*. at ¶ 11.
[200] *See also* State of Karnataka v. State of Andhra Pradesh, (2000) 9 SCC 572, 606 [original suit no. 1 of 1997](holding that the dispute regarding the validity of Scheme B evolved by the Krishna Water Disputes Tribunal in its award is not a water dispute, since the issue relating to the Krishna water sharing was already adjudicated upon by the tribunal and what was now being sought was its enforcement); State of A.P. v. State of Karnataka, (2000) 9 SCC 613, 639-640 & 649 [original suit no. 2 of 1997] (holding that while the issue of the height of the Alamatti dam is not a water dispute, issues relating to submergence and related displacement in the neighbouring State due to a particular height were).
[201] THE NARMADA RIVER & BASIN, https://sardarsarovardam.org/the-narmada-river-basin.aspx (last visited Dec. 22, 2021).
[202] I REPORT OF THE NARMADA WATER DISPUTES TRIB., *supra* note 82, at 25.
[203] B.R. CHAUHAN, SETTLEMENT OF INTERNATIONAL AND INTER-STATE WATER DISPUTES IN INDIA 239 (1992).
[204] *Id*.
[205] *Id*. at 17.
[206] I REPORT OF THE NARMADA WATER DISPUTES TRIB., *supra* note 82, at 1.
[207] *Id*. at 2.

the dispute raised by the State of Rajasthan.[208] Meanwhile, with the Prime Minister's assistance, the Chief Ministers of MP, Maharashtra, Gujarat, and Rajasthan entered into a formal agreement to resolve certain issues that made the Tribunal's task more manageable.[209] Finally, in 1978, the Tribunal declared its award.[210] All the parties filed references, and on 7th December, 1979, it gave its final order.[211] The Government of India published the same on 12th December, 1979.[212]

Some of the main points determined by the award are the following: The Tribunal was of the view that the Full Reservoir Level of the Sardar Sarovar Dam should be + 455 ft. providing for a maximum water level (MWL) of 460 ft.[213] The Tribunal accepted the parties' determination regarding the utilizable quantum of Narmada waters, fixed at twenty-eight million acre feet (MAF) based on seventy-five percent dependability.[214] This quantum of waters was equitably allocated between the States as follows: MP: 18.25 MAF; Gujarat: 9.00 MAF; Rajasthan: 0.50 MAF; and Maharashtra: 0.25 MAF.[215] The award contained directions on submergence, land acquisition, and rehabilitation of displaced persons.[216] The Gujarat Government was to pay to Madhya Pradesh and Maharashtra all costs relating to compulsory land acquisition.[217] Clause XI sub-clause IV(6)(ii) states that there could be no submergence unless the oustees were rehabilitated.[218] The Tribunal also directed the establishment of the Narmada Control Authority (NCA) to secure compliance.[219] The award was reviewable after forty-five years.[220] Since the award, Narmada's controversies have assumed an entirely new life gravitating

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[208] *Id*.
[209] NARMADA WATER DISPUTES TRIBUNAL, III THE REPORT OF THE NARMADA WATER DISPUTES TRIB. WITH ITS DECISION, AT 60 (1979).
[210] For the Final Order and Decision of the Tribunal, *see* NARMADA WATER DISPUTES TRIBUNAL, II THE REPORT OF THE NARMADA WATER DISPUTES TRIBUNAL WITH ITS DECISION, AT Ch. XX (1979).
[211] *See* NARMADA WATER DISPUTES TRIBUNAL, I FURTHER REPORT OF THE NARMADA WATER DISPUTES TRIBUNAL UNDER SECTION 5(3) OF THE INTER-STATE WATER DISPUTES ACT, 1956, AT Ch. IX (1979) [hereinafter, I FURTHER REPORT OF THE NARMADA WATER DISPUTES TRIB].
[212] *See* Ministry of Jal Shakti, http://mowr.gov.in/ (follow "Acts/Tribunals" hyperlink; then search starting point field for "Awards of Existing Tribunal" and search destination field for "Narmada Water Disputes Tribunal")
[213] I FURTHER REPORT OF THE NARMADA WATER DISPUTES TRIB., *supra* note 211, at 106, cl. VII.
[214] *Id*. at cl. II.
[215] *Id*. at cl. III.
[216] *Id*. at cl. XI.
[217] *Id*. at cl. XI (III).
[218] *Id*. at 213.
[219] *Id*. cl. XIV.
[220] *Id*. at cl. XVI.

to issues like displacement, rehabilitation, protection of the environment, and precautionary disaster management.[221]

B. The Krishna Water Dispute

The Krishna River is an inter-State river, the second-largest in peninsular India, that travels a distance of 1392 km, flowing through the States of Maharashtra, Karnataka and Andhra Pradesh, ultimately merging into the Bay of Bengal.[222] It is fed primarily by the heavy rainfalls of the Western Ghats and the many tributaries and sub-tributaries, including the rivers, Tungabhadra and the Bhima, which by themselves are major inter-state rivers.[223] Before India's independence, there were no significant projects in the Krishna basin, even though littered with numerous tanks and small diversion works.[224] When the Constitution came into force, the entire Krishna basin fell within the States of Bombay, Mysore (Karnataka), Hyderabad and Madras.[225] At an inter-State conference held in 1951 at New Delhi, a memorandum of agreement was developed to apportion the Krishna river system's available supply among the four riparian States for twenty-five years. [226] However, as the State of Mysore refused to ratify the agreement, it lost legitimacy. It was inevitable that disputes regarding the agreement's validity would arise. In the meantime, because of the States Reorganisation Act, 1956, the Krishna basin now fell within Bombay, Mysore and Andhra Pradesh, the riparian States. The Planning Commission continued to clear projects assuming that the 1951 memorandum was binding.[227] This created more pressure on the available supplies leading to disputes between the States. Mysore objected to Andhra Pradesh's projects and Maharashtra's westward diversion of Krishna Waters.[228]

To protect its interests, Mysore initiated an application to constitute a Tribunal under Section 3 of the ISRWD Act in January 1962.[229] Subsequently, Maharashtra and Andhra Pradesh also filed

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[221] Narmada Bachao Andolan v. Union of India, MANU/SC/640/2000; Narmada Bachao Andolan v. Union of India, MANU/SC/206/2005.
[222] KRISHNA WATER DISPUTES TRIBUNAL, I THE REPORT OF THE KRISHNA WATER DISPUTES TRIB. WITH THE DECISION, AT 8 (1973) [hereinafter I KRISHNA WATER DISPUTES TRIB.].
[223] *Id.* at 9 .
[224] *Id.* at 1 .
[225] *Id.*
[226] *Id.*
[227] *Id.*
[228] *Id*. at 3.
[229] Alice Jacob, *The Interstate River Disputes: Some Recent Developments*, 18 J. OF THE INDIAN L. INS. 611, 612 (1976).

applications.[230] On April 10, 1969, India's Government constituted the first Krishna Water Disputes Tribunal or the Bachawat Tribunal (KWDT-I).[231] Its report with the decision was delivered in 1973.[232] Since the parties' field for references, a Further Report and decision were submitted in 1976.[233] The Central Government published the same, and with this, the order became statutorily final and binding on the parties.[234]

The Tribunal determined the nature of the 1951 Agreement. It held that since Mysore did not ratify, there was no operative and concluded agreement between the parties and that ratification by the other States could not alter this.[235] The most critical issue is related to equitable apportionment. For this, the Tribunal determined 2060 thousand million cubic feet (tmc. ft.) at seventy-five percent dependability as the water that needed equitable apportionment.[236] The crux of the Tribunal's Report and its further report are the two Schemes - Scheme "A" and Scheme "B."[237] Under Scheme "A," the Tribunal made a mass allocation of the 2060 tmc. ft. in favor of three riparian States, indicating that Maharashtra will not use in any water year more than 565 tmc. ft., Karnataka more than 695 tmc. ft. and Andhra Pradesh not more than 800 tmc. ft.[238] Being the last riparian, Andhra Pradesh could use the remaining waters, but this would not confer the State any right over the excess quantity.[239] Since the parties requested the Tribunal to have not only a mass allocation of utilizable dependable flow at 75% but also an allocation based on a percentage basis in the surplus and deficit years of flow, the Tribunal evolved Scheme "B."[240] This scheme finds a place in both the original report and in the further report. However, for the implementation of Scheme "B," it was necessary to constitute the Krishna Valley Authority, "the back-bone of the scheme."[241] The Tribunal held that Scheme B could be brought into operation either when Maharashtra, Mysore, and Andhra Pradesh,

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[230] *Id*.
[231] *Id*.
[232] KRISHNA WATER DISPUTES TRIBUNAL, II THE REPORT OF THE KRISHNA WATER DISPUTES TRIB. WITH THE DECISION, AT 226 (1973) [hereinafter II KRISHNA WATER DISPUTES TRIB.].
[233] KRISHNA WATER DISPUTES TRIBUNAL, FURTHER REPORT OF THE KRISHNA WATER DISPUTES TRIB. AT 92 (1976).
[234] Ministry of Agriculture & Irrigation, Decision of the Tribunal As Modified By the Explanations and Guidance Given in Its Further Report, S.O. 384 (E) (Notified on May 31, 1976).]
[235] I KRISHNA WATER DISPUTES TRIB., *supra* note 222, at 37.
[236] II KRISHNA WATER DISPUTES TRIB., *supra* note 232, at 87.
[237] *Id*. at 166.
[238] *Id*. at cls. III, IV &V.
[239] *Id*. at 227.
[240] *Id*. at 166.
[241] State of Karnataka v. State of Andhra Pradesh, MANU/SC/0297/2000 at ¶ 3.

by an Agreement, created the Krishna Valley Authority or if the Parliament by legislation constitutes the same.[242] Scheme A did not depend upon any such agreement between the parties. It came into operation ipso facto via publication of the order of the Tribunal in the official gazette.[243] Since Andhra Pradesh opposed the possibility of an Agreement to constitute the Krishna Valley Authority, the Tribunal did not make Scheme B as part of its Final Order. The Tribunal also held that Scheme A could be reviewed after twenty-five years, i.e., by May 31, 2000, since by then the demands of the three States would have taken "much more realistic shape."[244] Regarding groundwater, the Tribunal held that the use of underground water by any State would not be considered a use of the river Krishna's water.[245] Therefore, the States were free to use the underground water within their respective State territories that fell within the Krishna basin.[246]

In 1997, three years before a review of scheme A could occur, Karnataka approached the Supreme Court under its original jurisdiction.[247] Karnataka argued that since Scheme B was part of the Tribunal's decision, it was incumbent upon the Central Government to notify the same to render it binding on the parties.[248] However, this was not done. Therefore, it wanted the Supreme Court to direct the Union to notify Scheme B and establish the Krishna Valley Authority. Karnataka argued that Andhra Pradesh could utilize the surplus waters over 2060 tmc. ft. by constructing large-scale permanent projects only after that.[249] Interestingly, Andhra Pradesh also knocked at the Supreme Court's doors, again invoking the original jurisdiction against what it claims were the gross violations by Karnataka of the Tribunal award.[250] In this regard, the primary grievance related to fixing the Almatti dam's height.

A Constitution bench of five judges heard both the suits and disposed of them.[251] As far as Karnataka's claims were concerned, the Supreme Court held that even though Scheme B provides a better utilization formula, it could not be considered a part of the Tribunal's decision. For it to be a decision, Scheme B should have conclusively decided the dispute, and it should be implemented independently.

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[242] *Id.*
[243] II KRISHNA WATER DISPUTES TRIBUNAL, *supra* note 232, at 166.
[244] *Id*. at 159.
[245] *Id*. at 226.
[246] *Id*.
[247] State of Karnataka v. State of Andhra Pradesh, MANU/SC/0297/2000.
[248] *Id*. at ¶ 2.
[249] *Id*. at ¶¶ 2 &3.
[250] *Id*. at ¶ 38.
[251] *Id*. Justice Pattanaik delivered separate judgements in these two suits on behalf of the Five Judge Constitution Bench.

Here, due to a lack of consent between the parties, Scheme 'B' could not be implemented. Moreover, the waters were apportioned under scheme A, and therefore, Scheme B could not be considered the Tribunal's decision.[252]

Regarding Andhra's grievances over the Alamatti dam's height, it stems from Karnataka's decision to fix it at 524.256 meters, to enable it to generate hydropower. Karnataka claimed that it would utilize only 173 tmc. ft. of water considering the Tribunal's order.[253] Any excess that the dam would store would be let out into the river after generating hydropower. [254] Nevertheless, Andhra feared that this would detrimentally affect its interests.[255] Given the controversial nature of the matter, the Union Government constituted a Committee of four Chief Ministers to examine the matter.[256] In its turn, it appointed an Expert Committee, which advised that the height be fixed at 519.6 meters, which would lead to 173 tmc. ft. of water being stored.[257] The Expert Committee also found that Karnataka's need for 524.256 mt. high Almatti dam arises only when Scheme B comes into force and not before.[258] In light of this, the Court concluded that there was no justification for having the height of the Almatti at 524. 256 mt.[259] It held that while there was no bar against Karnataka in constructing Almatti at the height of 519.6 meters, it would be subject to appropriate environmental clearances. Any question of further raising the dam's height to 524.256 meters had to be determined by a new tribunal.[260]

Subsequently, in 2002, Karnataka complained to the Government of India under the ISRWD Act, 1956.[261] Their primary grievance was that Andhra Pradesh was utilizing the surplus water by constructing permanent large-scale projects and was refusing to share the same with the other riparian States. Karnataka also claimed that both Andhra Pradesh and Maharashtra had no right to object to raising the height FRL of Almatti Dam from 519.6 mts. to 524.256 mts.[262]

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[252] *Id*. at 16.
[253] *Id*. ¶ 70.
[254] *Id*.
[255] *Id*.
[256] *Id*. ¶ 49.
[257] *Id*.
[258] *Id*. at ¶ 85.
[259] *Id*.
[260] *Id*. at ¶ 86.
[261] KRISHNA WATER DISPUTES TRIBUNAL II, THE REPORT OF THE KRISHNA WATER DISPUTES TRIBUNAL WITH THE DECISION, THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE RIVER KRISHNA AND THE RIVER VALLEY THEREOF BETWEEN 1. THE STATE OF MAHARASHTRA; 2. THE STATE OF KARNATAKA; 3. THE STATE OF ANDHRA PRADESH 136–137 (2010) [hereinafter KRISHNA WATER DISPUTES TRIBUNAL II, 2010].
[262] *Id*.

Maharashtra and Andhra Pradesh also had their axes to grind and filed their complaints.[263] Finally, in 2004, the Central Government issued a Notification constituting the Krishna Water Disputes Tribunal II.[264] The Tribunal gave its report and decision in December 2010.[265] The party States and the Central Government sought further clarifications from the Tribunal.[266]

In March 2011, Andhra Pradesh filed a Special Leave Petition before the Supreme Court challenging the decision of the KWDT-II.[267] An application was also made before the Supreme Court to stay the section 5(3) reference proceedings before the Tribunal. Even though the Supreme Court turned down this request, it passed an order directing the Central Government not to publish the Tribunal's decision relating to the reference petitions.[268] In November 2013, the Tribunal forwarded its report under Section 5(3) of the ISRWD Act, 1956.[269] However, on account of the Supreme Court order, the award is yet to be published. In the meantime, in 2014, the State of Andhra Pradesh was divided to form two new States: Andhra Pradesh and Telangana.[270] Due to this bifurcation, it became necessary to provide for water management and its sharing between these two States. Accordingly, the concerned legislation incorporated provisions for creating management boards for both the rivers—Krishna and Godavari and specifies their functions.[271] More importantly, it extends the Krishna Water Disputes Tribunal to make project-wise specific allocations and determine operational protocols for project-wise release of water in the event of deficit flows.[272] The Union Ministry of Water Resources, through a notification in 2014, extended the Tribunal's tenure for two years to give effect to these reference terms. Since then, the tenure of the Tribunal has been extended every year, as it focuses on hearing the water disputes between the States of Telangana and Andhra Pradesh.[273] Meanwhile, disputes have broken

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[263] *Id*. at 138–146.
[264] Ministry of Water Resources, S.O. 451(E) (Notified on April 2, 2004).
[265] KRISHNA WATER DISPUTES TRIBUNAL II, 2010, *supra* note 261, at 800.
[266] KRISHNA WATER DISPUTES TRIBUNAL II, FURTHER REPORT OF KRISHNA WATER DISPUTE TRIBUNAL-II 2 (2013) [hereinafter FURTHER REPORT OF KRISHNA WATER DISPUTE TRIBUNAL-II].
[267] Unreported Judgments, State of A.P. v. State of Karnataka, Special Leave Petition (Civil) No. 10498 of 2011 (SC) (matter is pending).
[268] *Id*.
[269] FURTHER REPORT OF KRISHNA WATER DISPUTE TRIBUNAL-II, *supra* note 266, at 398.
[270] The Andhra Pradesh Reorganisation Act, 2014.
[271] *Id*. at § 85.
[272] *Id*. at § 89.
[273] KRISHNA WATER DISPUTES TRIBUNAL, http://jalshakti-dowr.gov.in/acts-tribunals/current-inter-state-river-water-disputes-tribunals/krishna-river-water-dispute-tribunal (last visited, Dec. 26, 2021).

out between the States of Andhra Pradesh and Telangana regarding certain jurisdictional aspects relating to the Krishna River Management Board. This has led to Andhra Pradesh moving the Supreme Court through a writ petition under article 32 to protect the fundamental rights of its citizens, including the right to life, dependant on water for drinking.[274]

C. The Godavari Water Dispute

The Godavari is the second largest river in the Indian Union. Rising in the Western Ghats, the river flows through the Deccan plateau through the States of Maharashtra, Telangana, and Andhra Pradesh before it empties into the Bay of Bengal. To develop the river basin, in 1951, the Planning Commission convened a conference attended by all the riparian States except Orissa.[275] An agreement allocating the river basin flows amongst the concerned States was drafted, and all parties except Orissa ratified this agreement.[276] In the meantime, extensive territorial changes were affected by the States Reorganisation Act 1956, which also re-drew the Godavari river basin, leading to bitter disputes.[277] In 1962, the Mysore Government applied to the Central Government to refer the water dispute to the Tribunal.[278] Eventually, the Central Government constituted the Tribunal in 1969 and referred the water dispute to it.[279] All the States alleged that the 1951 Agreement was invalid and claimed for the Godavari waters' equitable distribution.[280]

While the parties were zealously placing their respective cases before the Tribunal, they were also making all possible efforts to reach bilateral and multilateral agreements on several issues relating to the dispute. The Tribunal allowed the States time, and there was full disclosure of evidence. Consequently, the parties were aware of all the facts pertinent to the equitable apportionment of the Godavari waters. The representatives of all the parties accompanied the Tribunal when it toured the Godavari valley, which helped the States to understand

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[274] The State of Andhra Pradesh v. Union of India, Supreme Court of India, W.P.(C) No. 772/2021 (Filed on 14-07-2021, matter is pending).
[275] GODAVARI WATER DISPUTES TRIBUNAL, I THE REPORT OF THE GODAVARI WATER DISPUTES TRIBUNAL WITH THE DECISION IN THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE RIVER GODAVARI AND THE RIVER VALLEY THEREOF BETWEEN 1) THE STATE OF MAHARASHTRA, 2) THE STATE OF KARNATAKA, 3) THE STATE OF ANDHRA PRADESH, 4) THE STATE OF MADHYA PRADESH, 5) THE STATE OF ORISSA 1 (1979) [hereinafter I GODAVARI].
[276] *Id*.
[277] *Id*. at 2.
[278] *Id*.
[279] *Id*. at 4.
[280] *Id*.

and appreciate the neighbour's water requirements and concerns.[281] Between 1975 and 1980, the contending states entered into several bilateral and other inter-state water-sharing agreements. In its award of 1979, the Tribunal held that it was dividing the Godavari waters based on these agreements to affect an equitable distribution of the waters.[282] The Central Government and the States of Maharashtra, Andhra Pradesh and Madhya Pradesh approached the Tribunal seeking explanation and guidance on a few aspects that primarily centred on the Polavaram project, which were answered in 1980.[283] Initially, there was a spirit of giving and take between the parties. Since then, water disputes have broken out between the parties over the interpretation of the bilateral Agreements.[284]

D. The Ravi-Beas Water Dispute

In 1955, an agreement was entered into to develop Ravi and Beas waters, in which Punjab's share was fixed at 5.90 MAF.[285] Subsequently, the State of Punjab was reorganized into two new States–Punjab and Haryana. It became necessary to determine the successor States' respective shares from the quantum allocated to erstwhile undivided Punjab. Disputes arose between the two successor States, and finally, in 1976 through a notification, the surplus Ravi-Beas waters was allocated between the two States, and Haryana's share was determined as 3.5 MAF.[286] Since Haryana was not a riparian State, the only way it could enjoy its waters was through a new canal.[287]

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[281] GODAVARI WATER DISPUTES TRIBUNAL, II THE REPORT OF THE GODAVARI WATER DISPUTES TRIBUNAL WITH THE DECISION IN THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE RIVER GODAVARI AND THE RIVER VALLEY THEREOF BETWEEN 1) THE STATE OF MAHARASHTRA, 2) THE STATE OF KARNATAKA, 3) THE STATE OF ANDHRA PRADESH, 4) THE STATE OF MADHYA PRADESH, 5) THE STATE OF ORISSA 7-9 (1979).

[282] I GODAVARI, *supra* note 275, at 19.

[283] GODAVARI WATER DISPUTES TRIBUNAL, I & II FURTHER REPORT OF THE GODAVARI WATER DISPUTES TRIBUNAL (1980). The Polavaram is an ambitious project that has national status. It involves an inter-basin transfer of waters, where water is diverted from the surplus Godavari into the deficit Krishna to provide for more irrigation, hydropower development and drinking water supply. The transfer would also enable more water availability upstream of the Nagarjunasagar dam over the Krishna which could be used by the concerned riparian states. *See Indirasagar (Polavaram) Project*, Ministry of Jal Shakti, Department of Water Resources, River Development & Ganga Rejuvenation, http://jalshakti-dowr.gov.in/acts-tribunals/other-inter-state-water-disputes/indirasagarpolavaram-project-ap.

[284] *See infra* notes 353–357 and accompanying text.

[285] GOVERNMENT OF INDIA, MINISTRY OF WATER RESOURCES, REPORT OF THE RAVI AND BEAS WATER TRIBUNAL 19 (1987) [hereinafter RAVI AND BEAS WATER TRIBUNAL].

[286] Government of India, Sharing of Ravi-Beas Waters Between Punjab and Haryana Arising out of Re-organisation of State of Punjab(Notified on March 24, 1976).

[287] State of Haryana v. State of Punjab, *supra* note 197, at ¶ 2.

Accordingly, the construction of the Sutlej-Yamuna Link Canal (SYL Canal), which was to pass through the Punjab and Haryana was initiated. The construction of SYL Canal was to be concluded by 1978.[288] The Haryana portion was completed in 1980,[289] but Punjab began to sing a different tune and adopted dilatory tactics to avoid the construction.[290]

In 1981, another agreement was entered to reallocate the Ravi Beas surplus waters between the concerned States.[291] This agreement allocated Punjab an enhanced 4.22 MAF, and Haryana was given 3.50 MAF.[292] The agreement also provided that the canal was to be completed within two years.[293] Punjab resumed construction; however, progress was again slow. In a U-turn, the Punjab Legislative Assembly in 1985 passed a resolution, repudiating the 1981 agreement.[294] In the same year, the "Punjab Settlement" was arrived at.[295] It contained an express provision that the SYL Canal would be completed by the August 15, 1986.[296] Regarding Punjab and Haryana's claims in the remaining waters, the matter was to be referred to a tribunal for adjudication.[297] To give effect to these terms, Section 14 was inserted into the ISRWD Act under which Ravi and Beas Water Tribunal ("the Eradi Tribunal") was constituted.[298] The Eradi Tribunal forwarded its report in 1987.[299] Regarding Punjab and Haryana's claims to the remaining waters of the Ravi-Beas, the Tribunal fixed Punjab's share at 5.00 MAF and Haryana's at 3.83 MAF.[300] The Tribunal affirmed that Punjab should complete its portion of the SYL Canal expeditiously.[301] The States of Punjab, Haryana, Rajasthan, and the Central Government sought clarification and guidance from the

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[288] *Id*.
[289] *Id*.
[290] *Id*. at ¶¶1- 3; For more details *see* Kanchan Vasdev, *Explained: Why the Punjab CM has Warned against Restarting SYL Canal Work,* The Indian Express, Aug. 20, 2020.
[291] *Agreement on Allocation of Surplus Ravi-Beas Waters and Implementation of Sutlej Yamuna Link Canal Project between Punjab, Haryana and Rajasthan,* (Dec. 31, 1981), *in* III (PART I) LEGAL INSTRUMENTS ON RIVERS IN INDIA: AGREEMENTS ON INTER-STATE RIVERS 91 (CENTRAL WATER COMM'N, 2015).
[292] *Id*. at cl. (i)
[293] *Id*. at cl. (iv).
[294] State of Haryana v. State of Punjab, *supra* note 197, ¶ 4.
[295] *Extracts from Punjab Settlement (regarding sharing of river water reached between Prime Minister of India and Sant Harchand Singh Longowal*, (July 24, 1985), *in* III (PART I) LEGAL INSTRUMENTS ON RIVERS IN INDIA: AGREEMENTS ON INTER-STATE RIVERS 111 (CENTRAL WATER COMM'N, 2015).
[296] *Id*. at ¶ 9.3.
[297] *Id*. at ¶ 9.2.
[298] RAVI AND BEAS WATER TRIBUNAL, *supra* note 285, at 2.
[299] *Id*.
[300] *Id.* at 296.
[301] *Id.* at 298.

Tribunal regarding certain findings in the report.[302] Despite the lapse of thirty-three years, the references remain unanswered and are still under the Tribunal's consideration.[303] Meanwhile, the half-dug canal continues to languish while Punjab persists with its defiance, seriously eroding the basic tenets of co-operative water federalism.[304]

E. The Vansadhara Water Dispute

The Vansadhara ("Vansa" means bamboo, and "dhara," is water flow) originates in Odisha (Orissa) State (upper riparian) and flows for about 265 kms. through Odisha and Andhra Pradesh before it finally enters the Bay of Bengal.[305] The dispute is traceable to the 1950's when Andhra Pradesh initiated a proposal to construct the Neradi Barrage over the river to cater to the irrigation requirements of nearly 200 villages in that State.[306] However, the barrage involved the submergence of 106 acres of land in Odisha.[307] Initially, Odisha had no objections and promised to acquire the lands for the project.[308] But, because of devastating floods, Odisha wanted the design modified. Andhra Pradesh proposed certain modifications. However, Odisha began to drag its feet, and this delay affected the creation of irrigation potential in Andhra Pradesh. Therefore, the State came up with a new proposal for constructing a side weir and a connecting flood flow canal on its side of the river at Katragada to draw about eight tmc. ft. of water to cater to the drinking and irrigation requirements. These were temporary measures until the operationalization of the Neradi barrage.[309] Odisha objected to these on the ground that the diversion "is an ingenious method" by Andhra Pradesh to divert the entire water

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[302] *See Ravi and Beas Water Tribunal*, Ministry of Jal Shakti, Department of Water Resources, River Development & Ganga Rejuvenation, http://jalshakti-dowr.gov.in/acts-tribunals/current-inter-state-river-water-disputes-tribunals/ravi-and-beas-water-tribunal

[303] *Id.*

[304] The Punjab Termination of Agreements Act, 2004, § 3&4 (Punjab); State of Haryana vs. State of Punjab, *supra* note 197; In Re: The Punjab Termination of Agreement Act, 2004, MANU/SC/1450/2016.

[305] VANSADHARA WATER DISPUTES TRIBUNAL, I THE REPORT OF THE VANSADHARA WATER DISPUTES TRIBUNAL WITH THE DECISION, IN THE MATTERS OF WATER DISPUTE REGARDING THE INTER-STATE RIVER VANSADHARA AND THE RIVER VALLEY THEREOF BETWEEN THE STATE OF ODISHA AND THE STATE OF ANDHRA PRADESH 15 (2017) [hereinafter I VANSADHARA].

[306] *Id*. at 29.

[307] *Id*. at 30.

[308] *Id*. at 30–31.

[309] VANSADHARA WATER DISPUTES TRIB., II THE REPORT OF THE VANSADHARA WATER DISPUTES TRIBUNAL WITH THE DECISION, IN THE MATTERS OF WATER DISPUTE REGARDING THE INTER-STATE RIVER VANSADHARA AND THE RIVER VALLEY THEREOF BETWEEN THE ST. OF ODISHA AND THE ST. OF ANDHRA PRADESH 185 (2017) [hereinafter II VANSADHARA].

of the Vansadhara, thereby depriving Odisha and its inhabitants of existing irrigation and drinking water.[310] Odisha also claimed that this diversion would irreparably damage the environment, the flora, the fauna, and the riverine morphology.[311] Ignoring these objections, Andhra Pradesh decided to proceed with the Katragada project, which prompted Odisha to file a complaint against the project with the Union Ministry of Water Resources under the ISRWD Act to create a water tribunal.[312]

Since no response from the Central Government was forthcoming, Odisha approached the Supreme Court for a direction to the Government of India to constitute a Tribunal.[313] Odisha's claim was allowed, and the Supreme Court directed the Central Government to constitute the Tribunal. The Vansadhara Water Disputes Tribunal (VWDT) computed 115 tmc. ft. as the river's yield, which was to be shared on a 50:50 basis between the States.[314] Permission was granted to Andhra Pradesh to construct the Neradi barrage and ancillary structures.[315] Odisha was to acquire the 106 acres for the project and hand it over to Andhra Pradesh, which would pay all costs relating to the compulsory land acquisition.[316] However, until the Neradi Barrage was operationalized, Andhra Pradesh was permitted to construct and operate the side weir at Katragada and withdraw up to eight tmc. ft. of water annually between June and November.[317] As and when the Neradi Barrage was commissioned, the Katragada side weir was to be de-commissioned.[318] The Tribunal also directed the creation of an Inter-State Regulatory Body to implement its order and supervise the Katragada side weir's functioning and ensure its de-commissioning as and when the Neradi Barrage was commissioned.[319]

F. The Mahadayi Water Dispute

The Mahadayi ("the Great Mother Goddess")[320] river rises in Karnataka and runs for thirty-five kms. before entering picturesque

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[310] I VANSADHARA, *supra* note 305, at 55.
[311] *Id*. at 47.
[312] *Id*. at 48.
[313] State of Orissa v. Government of India, MANU/SC/0144/2009, at ¶ 31 (directing the Central Government to constitute the tribunal).
[314] II VANSADHARA, *supra* note 309, at cl. II.
[315] *Id.* at cl. IV.
[316] *Id.* at cl. VIII.
[317] *Id.* at cl. III.
[318] *Id.* at cl. VI.
[319] *Id.* at cl. X.
[320] MAHADAYI WATER DISPUTES TRIBUNAL, II THE REPORT-CUM-DECISION OF THE MAHADAYI WATER DISPUTES TRIBUNAL WITH THE DECISION, IN THE MATTER OF REFERENCE NO. 1 OF 2011 RELATING TO WATER DISPUTES OF THE INTER-STATE

Goa, where it flows for another fifty-two kms. to merge with the Arabian sea.[321] Some of the originating streams of the Mahadayi flow from Maharashtra.[322] The Mahadayi river is the virtual "lifeline" of Goa.[323] Controversy over sharing the Mahadayi waters reached a crescendo in 2002, when Karnataka decided to press for an inter-basin transfer of waters from the Mahadayi basin to the Malaprabha basin.[324] Since negotiations failed to yield results, the Government of India in 2010 constituted the Mahadayi Water Disputes Tribunal.[325] Typically, most water disputes between States concern water sharing. However, the core aspect of this inter-state water dispute is the ecological consequences of the decision of Karnataka and Maharashtra (upper riparians) to utilize the Mahadayi waters (24.15 tmc. ft.) for areas that fell both within and outside the Mahadayi basin within their respective States.[326] Such diversion, Goa claimed, would result in a complete ecological disaster for it. As an ecologically fragile State, Goa is highly dependent on the Mahadayi to sustain its ecosystems. The water diversion would result in the total annihilation of the flora, the fauna, the hills, the ghats, the plains, marine life, mangroves, other rare and protected species and historical sites in Goa.[327] The Mahadayi river basin's final stretch, where the river meets the Arabian sea, is an extremely fragile river zone. Already, there is salt-water ingress, and tidal influence is felt upstream for almost thirty-six kms. which is almost sixty-nine percent of the river's total length in Goa. If Karnataka and Maharashtra diverted the waters, this would result in more salinity upsetting the riverine ecology and also contaminate the aquifers.[328]

RIVER MAHADAYI AND THE RIVER VALLEY THEREOF BETWEEN THE ST. OF GOA AND THE ST. OF KARNATAKA AND THE STATE OF MAHARASHTRA, 149 (2018) [hereinafter II MAHADAYI].

[321] *Id.* at cl. 107.

[322] *Id*. at 136.

[323] *Id*. at 124.

[324] MAHADAYI WATER DISPUTES TRIBUNAL, I THE REPORT-CUM-DECISION OF THE MAHADAYI WATER DISPUTES TRIBUNAL WITH THE DECISION, IN THE MATTER OF REFERENCE NO. 1 OF 2011 RELATING TO WATER DISPUTES OF THE INTER-STATE RIVER MAHADAYI AND THE RIVER VALLEY THEREOF BETWEEN THE ST. OF GOA AND THE ST. OF KARNATAKA AND THE STATE OF MAHARASHTRA, 2 (2018) [hereinafter I MAHADAYI].

[325] Ministry of Water Resources, The Mahadayi Water Disputes Tribunal, S.O. 2786(E) (Notified on Nov. 16, 2010).

[326] II MAHADAYI, *supra* note 320, at 113; *see also,* MAHADAYI WATER DISPUTES TRIBUNAL, XI THE REPORT-CUM-DECISION OF THE MAHADAYI WATER DISPUTES TRIBUNAL WITH THE DECISION, IN THE MATTER OF REFERENCE NO. 1 OF 2011 RELATING TO WATER DISPUTES OF THE INTER-STATE RIVER MAHADAYI AND THE RIVER VALLEY THEREOF BETWEEN THE ST. OF GOA AND THE ST. OF KARNATAKA AND THE STATE OF MAHARASHTRA, 2176 – 2244 (2018).

[327] II MAHADAYI, *supra* note 320, at 101.

[328] *Id*. at 108-110.

The Mahadayi Tribunal determined the water availability to be 188.06 tmc. ft. at 75% dependability.[329] Despite this vast potential, the actual utilization of the waters was less than five percent.[330] However, as the parties did not produce reliable data to evaluate their water claims against the criteria identified in the Helsinki Rules, 1966 and the Berlin Rules, 2004 for equitable apportionment, the Tribunal found that the equitable apportionment of the Mahadayi waters was not feasible at that stage.[331] Nevertheless, the Tribunal permitted the disputant states to undertake certain specific water resource development projects in this river's basin.[332] Provision was made to create a Mahadayi Water Management Authority to implement the award,[333] and the award was made reviewable after August 31st, 2048.[334] All the parties filed references before the Tribunal under Section 5(3) of the ISRWD Act, 1956. While these references were before the Tribunal, the States also filed special leave appeals in the Supreme Court.[335] Even though all these matters are pending, the Supreme Court has directed the Union Government to publish the Tribunal's award, which has been done.[336]

G. The Cauvery Water Dispute

The Cauvery water-sharing dispute is one of the oldest water-sharing disputes in this country. It continues to shape and re-shape the people's lives in the southern States of Karnataka, Kerala, Tamil Nadu and the Union Territory of Pondicherry or Puducherry.[337] Even though

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[329] MAHADAYI WATER DISPUTES TRIBUNAL, XII THE REPORT-CUM-DECISION OF THE MAHADAYI WATER DISPUTES TRIBUNAL WITH THE DECISION, IN THE MATTER OF REFERENCE NO. 1 OF 2011 RELATING TO WATER DISPUTES OF THE INTER-STATE RIVER MAHADAYI AND THE RIVER VALLEY THEREOF BETWEEN THE ST. OF GOA AND THE ST. OF KARNATAKA AND THE STATE OF MAHARASHTRA, cl. III (2018) [hereinafter XII MAHADAYI WATER DISPUTES TRIBUNAL].

[330] *Id*. at cl. VI (a).

[331] *Id*. at cl. VI (c).

[332] *Id*. at cl. VIII.

[333] *Id*. at cl. XII.

[334] *Id*. at cl. XIII.

[335] *See Mahadayi Water Disputes Tribunal*, Ministry of Jal Shakti, Department of Water Resources, River Development & Ganga Rejuvenation, http://jalshakti-dowr.gov.in/acts-tribunals/current-inter-state-river-water-disputes-tribunals/mahadayimandovi-river.

[336] *See* Unreported Judgements, The State of Maharashtra v. The State of Goa, Petition for Special Leave to Appeal (Civil) No. 32517 of 2018, decided on 20-02-2020 (SC); Ministry of Water Resources, Publication of final decision of Mahadayi Water Disputes Tribunal to adjudicate upon the water dispute regarding the inter-state river Mahadayi S.O.888(E) (Notified on Feb. 27, 2020).

[337] THE CAUVERY WATER DISPUTES TRIBUNAL, I THE REPORT OF THE CAUVERY WATER DISPUTES TRIBUNAL WITH THE DECISION: IN THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE RIVER CAUVERY AND THE RIVER VALLEY THEREOF BETWEEN 1) THE STATE OF TAMIL NADU, 2) THE STATE OF KARNATAKA,

the Cauvery dispute involves these four riparians, the contours of this dispute have been defined primarily by the interests, the claims, and counter-claims pressed by the States of Tamil Nadu and Karnataka. The dispute had its genesis in the early nineteenth century, when the Princely State of Mysore (presently, Karnataka), to develop its irrigation works, claimed that it had a natural right to the full use of all the surplus waters, over and above the prescriptive rights acquired by Madras (presently, Tamil Nadu).[338] Madras objected. It claimed that it had rights over all the waters that crossed its borders. The stalemate was finally resolved in an 1892 agreement, which restricted Mysore's right to construct new projects subject to prior approval from Madras.[339] Madras could refuse consent only to protect its existing prescriptive rights.[340] Subsequently, disputes arose when Mysore came up with a proposal to construct the Krishnarajasagar dam. Thereafter, an agreement was entered into in 1924, with a shelf-life of fifty years.[341] Mysore obtained the right to construct the Krishnarajasagar dam, and Madras, the Mettur dam.[342] Shortly before the expiry of the fifty years, differences began to crop up. Tamil Nadu wanted the agreements to continue, while Karnataka wanted their repudiation due to their iniquitous nature.[343] From the 1970s to 1990, attempts were made by the Central Government to resolve the crises but to no avail. Finally, a group of agriculturists from Tamil Nadu approached the Supreme Court to order the Central Government to establish a Tribunal to adjudicate the water dispute.[344] Considering that further delay would lead to more bitterness, the Supreme Court directed the Central Government to constitute the Cauvery Water Disputes Tribunal (CWDT).[345] The CWDT came into existence on June 2, 1990.[346] Immediately thereafter, Tamil Nadu approached the Tribunal for interim relief. As the Tribunal had doubts whether it had the power to

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3) THE STATE OF KERALA, 4) THE UNION TERRITORY OF PONDICHERRY, 27-29 (2007) [hereinafter I CAUVERY].

[338] *Id.*

[339] THE CAUVERY WATER DISPUTES TRIBUNAL, II THE REPORT OF THE CAUVERY WATER DISPUTES TRIBUNAL WITH THE DECISION: IN THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE RIVER CAUVERY AND THE RIVER VALLEY THEREOF BETWEEN 1) THE STATE OF TAMIL NADU, 2) THE STATE OF KARNATAKA, 3) THE STATE OF KERALA, 4) THE UNION TERRITORY OF PONDICHERRY, 4–7 (2007).

[340] *Id*. at 2–3.

[341] *Id*. at 31.

[342] *Id*. at 7.

[343] *See* Rita Ingrid Gebert, The Cauvery River Dispute: Hydrological Politics in Indian Federalism, (Aug., 1983) (unpublished Master of Arts thesis, Dep't of Political Science, The University of British Columbia) (on file with the author).

[344] Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimal Padhugappu Sangam v. Union of India, (1990) 3 SCC 440.

[345] *Id.*

[346] Ministry of Water Resources, Cauvery Water Disputes Tribunal, S.O. 437(E) (Notified on June 2, 1990).

grant the same, this issue soon became a bone of contention between the parties. Ultimately, this matter was decided by the Supreme Court in the affirmative.[347] The Tribunal accordingly issued an interim award directing Karnataka to release 205 tmc. ft. of water.[348] In an unprecedented move to nullify the interim order's application, Karnataka passed an ordinance, which led to another constitutional crisis forcing India's President to seek the Supreme Court's advice on its constitutionality.[349] In answering the reference, the Supreme Court advised the President that the ordinance (subsequently replaced by an Act of the Karnataka State Legislature) is constitutionally infirm, which meant that the interim award continued to operate.[350] This led to severe rioting targeted at the Tamils in Karnataka, and subsequently, riots broke out in Tamil Nadu as a reprisal.[351]

Ultimately, good sense prevailed, and the decks were cleared to implement the interim order.[352] Meanwhile, the Tribunal persisted with its work, and in all, it took it seventeen years to deliver the final award. The Tribunal determined the total water availability in the Cauvery basin to be 740 tmc. ft. at fifty percent dependability.[353] The final award to equitably apportion the waters in the entire Cauvery basin made an annual allocation of 419 tmc. ft. to Tamil Nadu, 270 tmc. ft. to Karnataka, thirty tmc. ft. to Kerala and seven tmc. ft. to Pondicherry.[354] Fourteen tmc. ft. was reserved for environmental protection and as inevitable seepage into the sea.[355] In a normal year, Karnataka was directed to release 192 tmc. ft. of water in specified monthly instalments to Tamil Nadu (182 tmc. ft. as the allocated share of Tamil Nadu and ten tmc. ft. for environmental purposes).[356] In a

[347] In the Matter of: Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96 (2).
[348] Ministry of Water Resources, Order of Cauvery Water Disputes Tribunal in Civil Miscellaneous Petition Nos. 4, 5, and 9 of 1990: In the Matter of Water Disputes Amongst the Governments of Tamil Nadu, Karnataka, Kerala, and Union Territory of Pondicherry viz, Dispute regarding the Inter-State River Cauvery and the River Valley Thereof, S.O. 840 (E) (Notified on Dec. 10, 1991).
[349] In the Matter of: Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96 (2).
[350] Ministry of Water Resources, S.O. 840(E), (Notified on December 10, 1991).
[351] Ranganathan v. Union of India, (1998) 8 SCC 201 (dealing with the issue of relief to the Cauvery riot victims).
[352] Ministry of Water Resources, Cauvery Water (Implementation of the Order of 1991 and all Subsequent related Orders of the Tribunal) Scheme, 1998, S.O. 675(E), (Notified on August 11, 1998).
[353] THE CAUVERY WATER DISPUTES TRIBUNAL, V THE REPORT OF THE CAUVERY WATER DISPUTES TRIBUNAL WITH THE DECISION: IN THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE RIVER CAUVERY AND THE RIVER VALLEY THEREOF BETWEEN 1) THE STATE OF TAMIL NADU, 2) THE STATE OF KARNATAKA, 3) THE STATE OF KERALA, 4) THE UNION TERRITORY OF PONDICHERRY, cl. IV. (2007).
[354] *Id*. at cl. V (A).
[355] *Id*. at cl. V (B).
[356] *Id*. at cl. IX.

distress year, the allocated shares were to be proportionately reduced.[357] The Tribunal determined that the use of underground water could not be reckoned as a use of the river Cauvery.[358] Against this final award, the Parties filed references before the Tribunal and some even preferred appeals to the Supreme Court, which were admitted.[359]

Section 6 of the ISRWD Act requires the Central Government to publish the Tribunal's decision. The Central Government used the parties' references and appeals before the Supreme Court as a pretext to delay the final award's notification. However, in an order passed in 2013, the Supreme Court directed the Central Government to publish the final decision, and in less than a week, it was done.[360] However, this could not resolve the stalemate that existed between the States and whenever monsoons failed, the matter would inevitably be dragged to the Supreme Court. One such incident occurred in 2016 when Karnataka persistently tried to flout even the Supreme Court orders, thereby threatening constitutionalism and the rule of law. This forced the Supreme Court to remark famously, "[t]he State of Karnataka should not [be] bent upon maintaining an obstinate stand of defiance, for one knows not when the wrath of law shall fall on one."[361]

Finally, in 2018, the Supreme Court brought closure to the dispute. In State of Karnataka v. State of Tamil Nadu, [362] it categorically held that the internationally recognized principle of equitable apportionment is the guiding factor to resolve disputes regarding water apportionment of an interstate river.[363] Even though it practically upheld the award of the CWDT, [364] it considered groundwater to be a relevant factor in the equitable apportionment of the waters. [365] Accordingly, given the quantity of groundwater available in Tamil Nadu (twenty tmc. ft.), it reduced ten tmc. ft. from the original quantity (192 tmc. ft). which the tribunal had directed Karnataka to release to Tamil Nadu. [366] Furthermore, given that Karnataka's capital, Bengaluru city had attained global status, an additional 4.75 tmc. ft. of water was also allocated to Karnataka at

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[357] *Id*. at cl. VII.
[358] *Id*. at cl. XII (A).
[359] *See infra* notes 440–447 and accompanying text.
[360] Ministry of Water Resources, S.O. 404 (E) (Notified on Feb. 19, 2013).
[361] V. Shivshankar, *Supreme Court Pulls Up Karnataka for Disobeying Orders to Release Water to Tamil Nadu,* THE WIRE (Sept. 30, 2016), https://thewire.in/government/sc-pulls-karnataka-disobeying-orders-release-water-tn
[362] State of Karnataka v. State of Tamil Nadu, (2018) 4 SCC 1.
[363] *Id*. at ¶ 395.
[364] *Id*. at ¶ 446.8.
[365] *Id*. at ¶¶ 426-429.
[366] *Id*. at ¶¶ 426.17–426.18.

Tamil Nadu's expense.[367] In sum, as per the new water-sharing formula, Karnataka was directed to release only 177.25 tmc. ft. of water to Tamil Nadu.[368] Given that this water-sharing arrangement (the Award passed by the Tribunal and as modified by its judgement)[369] was to operate for the next fifteen years,[370] the Supreme Court also ordered the Central Government to frame a scheme under the ISRWD Act, to ensure its smooth implementation.[371]

Indeed, given the acrimonious nature of such disputes and their long-drawn nature, the fault-lines that such disputes create can run deep and linger long-after an apparent solution. Soon after the 122-year-old dispute over the Cauvery water sharing was seemingly put to rest at least for the next fifteen years, Karnataka and Tamil Nadu are bracing up for yet another legal battle, which promises to be as intense as the water-war over the Cauvery.[372] It is these that heightens the significance of an effective dispute resolution mechanism for water disputes.

H. Discussion

Given the unique nature and the potential of inter-state water disputes to implicate issues relating to federalism, the Founding Fathers provided for enabling provisions in the Constitution that led to the enactment of the ISRWD Act, 1956. A striking feature of this statute is that it prescribes adjudication of water disputes through Tribunal as the method to resolve inter-state water disputes where negotiations fail to produce results. The ultimate objective of water dispute resolution is to evolve a water-sharing formula that seeks to secure the maximum sustainable utilization of the available water to derive the maximum benefit for the maximum number of people providing for their diverse needs while preserving the river's ecology and its flow. From this perspective, perhaps the most significant drawback of the ISRWD Act is that it is overtly procedural, containing no substantive guidance on how water should be shared between the competing co-basin states. Fortunately, as the discussion reveals, there is an overwhelming consensus among the various water dispute

[367] *Id*. at ¶ 446.15.
[368] *Id*. at ¶ 446.18.
[369] *Id*. at ¶ 446.19.
[370] *Id*. at ¶ 446.20.
[371] State of Tamil Nadu v. P.K. Sinha, MANU/SC/0589/2018 (India); Ministry of Water Resources, River Development and Ganga Rejuvenation, S.O. 2236(E) (Issued on June 1, 2018).
[372] *See infra* notes 430–434 and accompanying text.

tribunals that water sharing disputes must be decided based on the universally accepted principle of equitable utilization.[373]

As well, the law is silent on the environmental considerations. It views water from an anthropocentric lens and treats it as an arithmetically apportionable resource disregarding its life-sustaining quality. It ignores the integrated basin approach and fails to recognize the need for a holistic paradigm to conflict resolution that encompasses the complex interactions between various ecosystems at the land, water, and atmosphere levels. The law has other serious pitfalls as well. Presently, the Tribunal must decide the matter within three years. The Central Government can extend this time for a further period of two years. If there is a reference, then the time is extendable by a year. The Central Government can still extend this time for such further period as it considers necessary. Technically, a matter can thus languish indefinitely, as is happening with the Ravi-Beas water dispute.[374]

The law is thus inefficient, and due to the inherent inconsistencies in its legal architecture, the tribunal system, as the different disputes discussed above reveal, has not functioned well. In fact, the working of the tribunal system clearly discloses that it has only furthered "conflictual federalism", generating tensions and escalating bitterness between the States and the Union and the States inter se.[375] Once a discrepancy becomes apparent in the law as it stands at a given point in time that contributes majorly to the system's ineptness, the Union sometimes responds with piecemeal amendments. However, these reactive responses are "band-aid fix approaches" and are tardy and incomplete. It often ignores the real import of the issue, failing to approach it holistically to target an overhaul of the law in its entirety to ensure synergy and systemic integrity.

IV. WATER FEDERALISM AND TRIBUNALIZATION: A NEED TO REFORM THE SYSTEM?

As pointed out in the introduction, this inquiry is set in terms of two questions, namely, 1) should water be transferred from the State List to the Concurrent List? and 2) should India persist with the tribunal system, or should the judicial process at the Supreme Court level replace it? This Part will examine these questions based on the analysis in the earlier sections.

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[373] *See supra* text accompanying notes 362–371.
[374] *See supra* text accompanying notes 285–304.
[375] *See supra* text accompanying notes 202–372.

Under the present constitutional scheme, water is primarily a State subject. However, laxity in most States in addressing the water crises and providing for sustainable water governance, the lack of hydro-solidarity and the constant bickering between States over water sharing, and India's proposal to inter-link its water-surplus rivers with its water-deficient ones have led to demands to transfer water from the State list to the Concurrent list,[376] or the Union List, or even nationalize inter-State rivers. [377] Many believe that putting any of these measures into practice will obviate Tribunals' need for water-disputes resolution. It will also considerably strengthen the Central Government's hands to have a more significant say in water management and bring in the much-needed element of decisiveness. Furthermore, it has been argued that the Central Government should have the power to distribute such waters, the exclusive right over the energy generated utilizing inter-state river waters, and the responsibility for flood control and erosion.[378]

The two Commissions on Centre-State Relations examined some of these matters. The Sarkaria Commission specifically looked at the proposal to transfer water from the State List to the Union List,[379] and the Punchhi Commission to nationalize inter-state rivers or transfer water from the State List to the Concurrent List.[380] Both did not endorse any of the proposals. The Sarkaria Commission went on to hold, "the existing arrangements . . . (are) the best possible method of distributing power between the Union and the States with respect to this highly sensitive and difficult subject."[381] Thereafter, in 2016, the Union Ministry of Water Resources sought comments from the Ministry of Law and Justice regarding the possibility of shifting water from Entry 17 of the State List to the Concurrent List. [382] The Legislative Department advised that given the "carefully crafted and delicate balance" between Entry 56 of List I and Entry 17 of List II, it was inadvisable to transfer Entry 17 from the State List to the

[376] Cabinet Secretariat, Government of India, Report of the Committee on Allocation of Natural Resources, 161 (2011).
[377] The Nationalisation of Inter-State Rivers Bill, 2019, Bill No. 163 of 2019 (July 9, 2019).
[378] *See generally*, Sushmita Sengupta, *Debate: Should Water be brought under Centre's Control to Settle Inter-State Disputes?*, DOWN TO EARTH, June 30 2016; HT Correspondent, *Tackling Drought: Include Water in Central List, Suggest RS Members*, HINDUSTAN TIMES, Apr. 28, 2016.
[379] Sarkaria Commission, *supra* note 169, at ¶ 17.4.03.
[380] Commission on Centre-State Relations, VI Environment, Natural Resources and Infrastructure ¶2.6.03 (2010)(pointing out that transferring water would lead to a domino effect where demands would be made to transfer other subjects like land).
[381] Sarkaria Commission, *supra* note 169, at ¶ 17.4.03.
[382] Standing Committee on Water Resources (2019-20) Seventeenth Lok Sabha, Ministry of Jal Shakti – Department of Water Resources, River Development and Ganga Rejuvenation: Demands For Grants 6 (2019).

Concurrent List.[383] However, it was "pragmatic to have a separate entry under the Concurrent List to deal with matters relating to water conservation, water preservation, water management, etc."[384] This legal advice's practical import is to create a façade that the existing federal relations on the water will be left untouched. However, in reality, through this legal subterfuge (providing a separate entry for water in the Concurrent List), the Union would indirectly accomplish what it cannot now do directly. The constitutional powers that the States enjoy over water secured by the Constitutional Fathers will be thoroughly denuded. There are already a host of legislative entries in the Seventh Schedule to the Constitution, including the residual powers under Entry 97, List III, which secures the Union a vast field of legislative powers, empowering it to push projects like river-linking to its logical conclusion. Therefore, there is no requirement to amend the Constitution to shift water from the State List to place it in the Concurrent List or even provide new entries in the Concurrent List.

Whether the proposals discussed above promotes cooperative water federalism is also doubtful for the following reasons. As Part 2 reveals, constitutionally, the general scheme is that states have jurisdiction over intra-state rivers and all other waters that fall within their territory (including inter-state, provided its action does not affect other riparian States). At the same time, it is the Union that has overriding rights over inter-state rivers. Even within these existing constitutional parameters, the Central Government by virtue of federalism plays a firm and leading role in policy formulation and development regarding intra-state water management. The union ministry that deals with water resources has over the years evolved and expanded its mandate from the Ministry of Irrigation and Power (1952) to the present "Ministry of Jal Shakti" which integrates the erstwhile Ministry of Water Resources, River Development and Ganga Rejuvenation and the Ministry of Drinking Water and Sanitation for integrated and holistic water management.[385] The Union provides a national perspective on water planning. It is responsible for legislative action to curb water pollution;[386] it has catalyzed the move towards

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[383] *Id.*

[384] *Id*.

[385] *Organizational history of the Department of Water Resources, River Development and Ganga Rejuvenation*, Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, http://jalshakti-dowr.gov.in/about-us/history (last visited Nov. 10, 2021).

[386] The Water (Prevention and Control of Pollution) Act, 1974, Bill No. 06 of 1974 (noting that this legislation traces its constitutional sustenance to article 252(1)); See also *the Draft National Water Framework Bill*, 2016, Department of Water Resources, River Development and Ganga Rejuvenation, http://jalshakti-dowr.gov.in/sites/default/files/ Water_Framework_May_2016.pdf (last visited Nov. 10, 2021); *See also* Dam Safety Bill, 2019, Bill No. 190-C of 2019 (Aug. 2, 2019);

groundwater development and regulation in the States through Model Bills, which serve as templates for State legislation,[387] and the Central Groundwater Authority.[388] It has initiated centrally sponsored schemes to augment drinking water supplies and provide for related infrastructure.[389] The Union has also facilitated participatory irrigation management, [390] command area development, [391] river basin management, and oversight in water development through environmental and forest-related legislation. [392] It secures the implementation of the awards of the various inter-State river water dispute tribunals.[393]

In respect of inter-state river waters, however, the Union has been lax in practice. For instance, under Entry 56, the Parliament can regulate and develop inter-state rivers and river valleys. The River Boards Act was enacted way back in 1956; however, this law is a dead letter, primarily because of the Union Government's apathy. The attempts to replace the River Boards Act with the new legislation are yet to bear fruit. [394] In interstate-river water disputes, the Union Government has a pivotal role in upholding the federal structure. In the Republic's initial days, the Union Government adopted a proactive

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Standing Committee on Water Resources (2010-2011) Fifteenth Lok Sabha, Ministry of Water Resources, "The Dam Safety Bill, 2010" Seventh Report 16-17 (2013).

[387] See Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, *The Model Bill for the Conservation, Protection, Regulation and Management of Groundwater*, http://mowr.gov.in/sites/default/files/Model_Bill_Groundwater_May_2016_0.pdf (last visited Dec. 11, 2021).

[388] Ministry of Jal Shakti, Department of Water Resources, River Development And Ganga Rejuvenation, Central Ground Water Authority, S.O. 3289(E) (Issued on Sept. 24, 2020).

[389] *E.g.*, The National Water Mission, http://nwm.gov.in/ (last visited Dec. 11, 2021).

[390] Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, *Status of Participatory Irrigation Management (PIM) in India: Policy Initiatives Taken And Emerging Issues*, http://mowr.gov.in/sites/default/files/CADWM_Status_of_PIM_0.pdf (last visited Dec. 13, 2021).

[391] Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, *CADWM Programme Background*, http://mowr.gov.in/programmes/cadwm-programme-background (last visited Dec. 14, 2021).

[392] See Ramaswamy R. Iyer, *Should water be moved to Concurrent List?,* The Hindu, June 18, 2011, https:// www.the hindu.com/opinion/lead/should-water-be-moved-to-concurrent-list/article2113384.ece

[393] The Inter-State River Water Disputes Act, 1956, § 6A.

[394] PRS Legislative Research, *The Draft River Basin Management Bill*, 2018, https://www.prsindia.org/sites/default/files/bill_files/Draft%20River%20Basin%20Management%20Bill%2C%202018.pdf (last visited Dec. 12, 2021) (seeking to further amend and overhaul the River Boards Act 1956 by providing for the establishment of the River Basin Authority for the regulation and development of inter-state rivers and river basins).

stance that succeeded in laying the foundations of a favourable atmosphere to resolve inter-state river water disputes like in the Narmada and Godavari water sharing. However, in most inter-state water disputes, the Union Government has wanted to discharge this duty. Even though the Central Government has attempted to forge a settlement in the most intractable water disputes like the Cauvery, or the Ravi-Beas, the intervention has not been effective. The Central Government often maintained a stoic silence and essays a passive foot-dragging role, preferring to ignore the constitutional order to let the dispute escalate, fester, and take its course. Doing so may result in a higher risk of mismanagement that could imperil the federal structure, worsen water scarcity, and even lead to adverse environmental consequences. The Supreme Court has also reprimanded the Central Government for this callous attitude. It has observed, ". . . such friction between . . . States has been continuing on account of lack of political will at the central level to deal with the problem with determination. The lack of interstate cooperation is the main factor leading to such dispute for sharing the water of a river."[395]

In the early years of India's federation, the predominance of a single political party ruling at the Centre and in most States facilitated dialogue to resolve differences at the political level, and there was always a spirit of giving and taking. But from the mid-1980s onwards, the political landscape drastically changed. Coalition politics replaced single party-dominant politics, and many regional and smaller political parties began to occupy the centre-stage. Since most of these political parties depended on local support, hydro-politics intensified. Regional identities and clamour for sons of the soil policies assumed importance, and water soon became a useful political tool to mobilize support and garner votes.[396] As the Supreme Court observes in the Cauvery water dispute,

> *[t]here was a time, after the dispute arose, when the Governments in the States of Karnataka and Tamil Nadu as also at the center were run by one common political party. Perhaps if the center had intervened [effectively] during that period, there was a considerable chance of settlement by negotiation. No serious attempt seems to have been made at that time to have the dispute resolved, and it has been shelved and*

[395] State of Haryana v. State of Punjab, MANU/SC/0026/2002 at ¶ 24.

[396] Ramaswamy R. Iyer, *Cauvery Dispute A Lament and a Proposal*, ECON. & POL. WKLY. March 23, 2013, at 48, 51–52 (highlighting the role of "destructive politics" in the Cauvery water dispute); Ramaswamy R. Iyer, TOWARDS WATER WISDOM: LIMITS, JUSTICE, HARMONY 33 (2007)(pointing out that Inter-State river-water disputes are the most visible manifestation of water politics).

> *allowed to catch up momentum and give rise to issues of sensitivity . . .*[397]

All the other water disputes have similar stories of ineptness on the part of the Central Government. In the dispute relating to the Sutlej Yamuna Link canal construction, the Tribunal passed its order in 1987. The State of Punjab filed an application seeking clarifications. No final decision was taken on that application. In the meantime, a vacancy arose in the Tribunal, but the Central Government chose not to fill it. This led to a curious situation where the Tribunal presided over by a retired Supreme Court Judge was forced to sit idle as the other members were not appointed for reasons unknown. As such, the Tribunal's continuance is a drain on the public exchequer. The Supreme Court condemned this inaction on the part of the Central Government in the most stringent language. It said:

> *We really fail to understand why such a high-powered Tribunal . . . would be permitted [just to sit] idle and why the Central Government . . . has not bestowed any attention [on] the proper functioning of such Tribunal . . . A retired Supreme Court Judge, who has been appointed as the Chairman of a Water Disputes Tribunal, would certainly not like to sit idle at the cost of huge [loss to the] public exchequer and even otherwise, it would be beneath his dignity to continue as Chairman, without doing any work . . . To avoid any further embarrassment and criticism we expect that the Central Government would do well in filling up the vacancies in the Tribunal . . .* [398]

Despite this admonition, the Central Government is yet to take the necessary steps to appoint the members. The Tribunal is instead given regular extensions. There is no convincing logic that the Central Government would rise above petty politics to fulfil its constitutional obligations if the water is transferred to the Concurrent List. In fact, such a transfer may even serve to intensify hydro-politics. Going by previous experience, some politically more powerful and significant States may be favoured to the detriment of politically less significant States. Such a move can also run afoul of the principle of subsidiarity and decentralization, which holds that matters should be left to that

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[397] Tamil Nadu Cauvery Neerppasana Vilaiporugal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India, (1990) 3 SCC 440.
[398] State of Haryana vs. State of Punjab, MANU/SC/0026/2002, at ¶ 24.

level of government most appropriately placed to resolve.[399] States will be divested of their power over such a critical resource, dented already because of the Central Government's enormous powers on water. The States will be reduced to mere stooges carrying out the Central Government diktats. Moreover, the State governments are constitutionally bound to endow on local self-government institutions by law such powers and authority to enable them to function effectively.[400] Any further tinkering with the existing scheme may upset this balance that now exists. Therefore, it is imperative that "cooperative water federalism" as envisaged by the Constitutional Fathers is maintained. It is vital to meet the aspirations of the people who inhabit the territorial entity called "State" and, of course, to preserve India's unity and integrity. As well, the idea of "competitive federalism" is fast gaining currency in India.[401] This approach envisages healthy competition between the States to create more economic development opportunities.[402]

And in this regard, water, which has significant economic connotations, may turn out to be one of the significant resources that may provide a State with a competitive advantage over its peers. Therefore, States may not be willing to barter away this advantage even if it may compel the national interest unless there is an appropriate quid pro quo.

Most water tribunals, at least in the initial years, have, by and large, lived up to the expectations reposed on them and were able to secure water justice to the disputant states and their inhabitants. Some of the tribunals even formulated principles far ahead of their time. As Harish Salve notes,

> *[a]t a time when environmental concerns were minimal, [the Tribunal] took care to put in place ameliorative measures to undo the possible environmental fallouts of [the] project. It also [devised] machinery to deal with the human problem of displacement of project affected persons—this at a time when the Supreme Court . . . construed the rights under Article 21 as being limited*

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[399] Iyer, *supra* note 392 (arguing that while placing water on the Concurrent List may not necessarily be an act of centralisation, however, ultimately, that would be the result).
[400] *Id*; *See* India Const. arts. 243G and 243W.
[401] Amitabh Kant, *Why Cooperative and Competitive Federalism is the Secret to India's Success*, WORLD ECON. F. https://www.weforum.org/agenda/2019/10/what-is-cooperative-and-competitive-federalism-india/ (last visited Dec. 25, 2021).
[402] *Id*.

> *to protection against invasion of life or liberty by executive action not authorized by law.*[403]

All the same, there have been unfortunate instances where tribunals have failed to take the dispute head-on. Tribunals have allowed it to drag, complicating matters to hit the root of the federal fabric. The discussion in Part 3 reveals several flaws in the tribunal system's functioning. Delay, inaction, and apathy plague every step of the process, right from setting up the Tribunal to its actual workings, and finally, to the award's notification and implementation. All this has robbed the system of its sheen. Section 4 of the ISRWD Act calls upon the Union Government to set up a tribunal only when it is satisfied that negotiations cannot settle the dispute. Experience reveals that the Union Government has indefinitely withheld the decision to set up a tribunal in relation to certain water disputes because it was not satisfied that negotiations had failed. Examples of delay permeate the setting up of all the water tribunals. While the Narmada dispute dates to 1963, the State of Gujarat complained in 1968, and the Tribunal was constituted in 1969.[404] The Godavari and Krishna disputes began around 1956, and the States made formal requests for reference from 1962 onwards. Ultimately, the Godavari and Krishna disputes were referred to tribunals in 1969.[405] The Eradi Tribunal over the Ravi-Beas water sharing was constituted in 1986, only to effectuate the Punjab Settlement of 1981.[406] In the case of the Cauvery dispute, two of the basin states, Tamil Nadu and Kerala, had asked to refer the matter to a tribunal in the 1970s. However, the Tribunal was constituted only in 1990, and that too only after intervention by the Supreme Court.[407] In the Vansadhara dispute, the Supreme Court again had to intervene, and the Tribunal was constituted in 2010.[408] The same is the case with the Mahadayi (2010)[409] and the Mahanadi (2018).[410]

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[403] Harish Salve, *Inter-State River Water Disputes*, *in* THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION, 502, 519 (Sujit Choudhry et. al, 2016).
[404] *See infra* Table 1.
[405] *Id*.
[406] *See* The Inter-State River Water Disputes Act, 1956, §14 (providing for the constitution of the Ravi and Beas Waters Tribunal).
[407] Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimal Padhugappu Sangam v. Union of India, (1990) 3 SCC 440; *See infra* Table 1.
[408] State of Orissa v. Government of India, MANU/SC/0144/2009; *See infra* Table 1.
[409] *See infra* Table 1.
[410] Unreported Judgements, State of Odisha v. State of Chhattisgarh, Original Suit, No. 1 of 2017, decided on 23-01-2018 (SC), https://main.sci.gov.in/judgments (directing the Central Government to constitute a Water Disputes Tribunal within a month).

Once constituted, the process before the tribunals is long-winded. In the Narmada matter, the Tribunal took nine years to award the order from the date of the reference. Whereas the Krishna Tribunal I took four years; the Krishna Tribunal II took nine years; the Godavari Tribunal took ten years.[411] The Eradi Tribunal pronounced its award in 1987, after that, certain references were made to it. Despite the lapse of thirty-four years, the Ravi-Beas Tribunal remains in a state of suspended animation and is yet to answer the reference.[412] It took seventeen long years for the Cauvery Water Disputes Tribunal to produce its elusive award.[413] The Vansadhara Tribunal took seven years, and the Mahadayi Tribunal took eight years. References were filed on both. While the Vansadhara Tribunal answered the reference in June 2021,[414] appeals have been preferred to the Supreme Court. The Mahadayi matter is pending before its Tribunal and the Supreme Court.[415]

The delays can be attributed to various factors, out of which two stand out: first, the proceedings' adversarial nature. Even though Article 262 and the ISRWD Act's underlying objective was to avoid legal technicalities and ensure expeditious disposal, the Tribunal as a quasi-judicial body has the trappings of a court. Section 9 (1) of the ISRWD Act endows these tribunals with a civil court's powers. Neighbouring riparian states fought tenaciously before the Tribunal through their legal teams like two adjacent property owners fighting over a boundary dispute. They adopt unreasonable, unrealistic, motivated, and contradictory attitudes, which keep changing from time to time, obviously under local pressures and political compulsions. As the Tribunal trudges along, it sieves the evidence, sits through arguments, examinations, and cross-examinations of witnesses and painstakingly analyses the technical records with assessors' assistance. Sometimes, the parties submit fudged and incomplete data, practically

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411 *See infra* Table 1.

412 *See Ravi and Beas Water Tribunal*, Ministry of Jal Shakti, Department of Water Resources, River Development & Ganga Rejuvenation, http://www.jalshakti-dowr.gov.in/acts-tribunals/current-inter-state-river-water-disputes-tribunals/ravi-and-beas-water-tribunal.

413 *See infra* Table 1.

414 Staff Reporter, *Vamsadhara tribunal allows A.P. to build Neradi barrage,* THE HINDU, June 21, 2021. Answering the reference should have brought in an element of finality. However, since appeals are pending in the Supreme Court, the Odisha government has refused to give its consent to notify the final award of Tribunal in the official gazette. Express News Service, *Odisha refuses to notify Vamsadhara award,* THE NEW INDIAN EXPRESS, July 7, 2021. Unreported Judgements, The State of Odisha v. The State of Andhra Pradesh, Petition(s) for Special Leave to Appeal (Civil) / No. 27930 Of 2019, decided on 6-01-2020 (SC), https://main.sci.gov.in/supremecourt /2019/ 38986/38986_2019_8_10_19307_Order_06-Jan-2020.pdf.

415 *See infra* Table 1.

tying up the hands of the Tribunal as was the case in the Mahadayi water dispute.[416] Even though not stated in the ISRWD Act, the tribunals can now provide interim reliefs thanks to judicial interpretation.[417] And, against these interim reliefs and orders, the parties can file appeals, further prolonging the matter.[418] All this has led to the procedure becoming more court-like and highly adversarial.

Second, even when a Tribunal is seized of the matter, attempts to bring about solutions at a political level continue, compounding the delay. Undoubtedly, a political settlement of a river water dispute leads to more satisfactory outcomes. In the dispute involving the sharing of the River Godavari waters, the party-States displayed a remarkable spirit of accommodation and sincerity in their efforts to settle "[a] highly technical and complicated water dispute through negotiations."[419] They successfully resolved their differences through mutual efforts, and in doing so, they set a unique precedent for other States to potentially follow. Unfortunately, this was not to be. Despite a political proposal's imperativeness from a national perspective to resolve a water conflict, the acutely discordant nature of hydro-politics in India ensures that no executive or political party in power in a State will waive its water claims for fear of political backlash.[420] Often the parties ignore constitutional obligations and the more significant interests of the federation, and consequently, water politics relegates legal issues to the background. In this regard, the following observation of the Mahadayi Water Disputes Tribunal is apposite:

> *. . . [W]ater disputes are merely seen as political issues and water management problems. Thus, for solving such disputes, interminable conferences attended by political representatives, bureaucrats and water management engineers, take place, and legal aspects get pushed into the background. With legal [issues] getting blurred, such conferences hardly lead to any settlement, with the result that the water disputes drag on. The consequent delay in settlement of water disputes blocks the development of water resources and*

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[416] *See supra* text accompanying notes 329–336.
[417] In Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 522 (1993).
[418] *Id.*
[419] GODAVARI WATER DISPUTES TRIB., I & II FURTHER REPORT OF THE GODAVARI WATER DISPUTES TRIB. ¶ 142 (1980).
[420] *See* RAMASWAMY R. IYER, *supra* note 135, at 140; Indira Khurana, *Politics and Litigation Play Havoc: Sutlej Yamuna Link Canal*, 41 ECON. & POL. WKLY., Feb.18, 2006, at 608–611.

> *causes untold miseries to the concerned States and their people.*[421]

The agonizing delay continues to plague even after the Tribunal produces its final award. There have been inexplicable delays by the Central Government in notifying the tribunals' orders, resulting in uncertainty in enforcement. The process took three years in the Krishna Award and one year in the Godavari matter. It took five years in the Cauvery dispute and that too, after intervention by the Supreme Court. In the Mahadayi dispute, it is only because of the Supreme Court of India's intervention that the Central Government notified the award.[422] Matters stand aggravated when the Central Government continues to play hot and cold when required to frame schemes under section 6A of the ISRWD Act and constitute relevant authorities to implement the awards. All these naturally tend to complicate the dispute settlement process.

In short, by the time a Tribunal completes its process, and the award becomes final after notification by the central government or after disposal of appeals by the Supreme Court, the disputes turn hopelessly stale. By then, much water would have flowed under the bridge to alter the waterscape drastically. For instance, concerning the SYL Canal issue, the State of Punjab asserts that nearly three decades have elapsed since the Eradi Tribunal re-assessed the Ravi-Beas waters. During this period, the water situation has worsened, and presently Punjab claims that there is no water to spare for Haryana.[423] At the same time, Haryana, a predominantly agricultural but semi-arid state, has lost considerable economic opportunities that it could have gained by using its legally entitled waters. Haryana farmers have had to sink their wells deeper into the earth's bowels to extract groundwater. This has resulted in unsustainable groundwater extraction patterns and haphazard regulation, which in their turn has indirectly, at least in a limited way, contributed to the haze pollution problem that engulfs the air column over India's capital city, New Delhi, every year.[424]

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[421] XII MAHADAYI WATER DISPUTES TRIBUNAL, *supra* note 329, at 2688.
[422] *See infra* Table 1.
[423] Express News Service, *Punjab will burn if forced to share water with Haryana, says Captain Amarinder* THE INDIAN EXPRESS (Aug. 18, 2020), https://indianexpress.com/article/india/syl-canal-punjab-haryana-water-pakistan-6560197/.
[424] *See* Mayank Aggarwal, *Laws Meant to Save Water Unexpectedly Led to More Air Pollution: Study*, THE WIRE (Sep. 2, 2019), https://thewire.in/environment/laws-meant-to-save-water-unexpectedly-led-to-more-air-pollution-study; *See also* M.C. Mehta v. Union of India, (2020) 7 SCC 530, 532 (pointing out that farmers cannot by burning stubble in their fields to place lives of sizeable populations in jeopardy).

Even settled disputes are being re-litigated or are assuming new leases of life, thereby reflecting the tenuous nature of these arrangements. Such developments can affect peace and water security. In the succeeding paragraphs, two such incidents are highlighted: the first involves the Babhali barrage, and the second a check dam over a tributary of the *Pennaiyar,* an inter-state river that flows through Karnataka and Tamil Nadu.

In 2006, Andhra Pradesh invoked the Supreme Court's original jurisdiction under Article 131 of the Constitution complaining violations by Maharashtra of the bilateral agreements of 1975 that both States had entered into and which were subsequently endorsed in the report and final order of the Godavari Water Disputes Tribunal.[425] Under the agreement of 1975, Maharashtra permitted Andhra Pradesh to construct the Pochampad dam project, whose water-spread extends into Maharashtra. Several years later, Maharashtra began constructing the Babhali barrage, which fell within the reservoir spread of the Pochampad dam. Andhra Pradesh contended that this was contrary to the award and once complete, the Babhali would practically stop the flow into the Pochampad.[426] Thus, the Supreme Court was called upon to interpret the terms of the 1975 agreement and the 1979 award. It held that Maharashtra has the right to utilize the Godavari waters below the three dams mentioned in the Agreement up to Pochampad site to the extent of sixty tmc. ft. for new projects. The Babhali barrage required 2.74 tmc. ft. of water. Furthermore, the Babhali barrage would only affect 0.6 tmc. ft. from the common submergence of the Pochampad reservoir. Maharashtra was willing to reimburse this quantity.[427] Thus, Andhra Pradesh could not make a case of substantial injury of a severe magnitude to justify an injunction.[428] Nevertheless, the Supreme Court directed the setting-up of a three-member supervisory committee to oversee the Babhali barrage's operation.[429]

Within months of the Supreme Court's decision in the Cauvery matter, Tamil Nadu approached the Supreme Court seeking to invoke its original jurisdiction against Karnataka over sharing the *Pennaiyar* inter-state river waters.[430] What renders this dispute controversial is that this river is one of the fifteen rivers mentioned in Schedule - A of the Madras-Mysore Agreement of 1892, one of the core legal instruments that determined the nature of the Cauvery water dispute. As per Clauses II and III of the Agreement, Mysore (Karnataka), could

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[425] State of Andhra Pradesh v. State of Maharashtra, MANU/SC/0200/2013.
[426] *Id*. at ¶ 9.
[427] *Id*. at ¶ 62.
[428] *Id*. at ¶ 81.
[429] *Id*. at ¶ 83.
[430] State of Tamil Nadu v. State of Karnataka, MANU/SC/1568/2019.

not execute new irrigation works without the previous consent of Madras (Tamil Nadu). It also had to furnish complete information regarding the proposed project.[431] Karnataka took up a few works in the *Pennaiyar* river Basin without informing Tamil Nadu. Of particular concern was Karnataka's check dam across the *Markandeyanadhi*, a tributary of the *Pennaiyar* intended to augment drinking water supplies.[432] Karnataka claimed that the 1892 Agreement was modified by a subsequent 1933 Agreement, which dispensed the requirement to provide information if the diversion was not for irrigation.[433] The Supreme Court refused to intervene since Karnataka was executing these projects after receiving appropriate clearances from the relevant Union Ministries. Nevertheless, since the matter was an inter-state water dispute, it directed Tamil Nadu to make a proper application to the Central government to create an Inter-State River Water Disputes Tribunal.[434] Thus, the stage has been set for the next round of legal wrangling between the two States.

The sum and substance of Article 262 and section 11 of the ISRWD Act, is that the Supreme Court or any other court cannot exercise jurisdiction over a water dispute referred to the Tribunal. Nevertheless, States have relied on the Supreme Court's original and appellate jurisdiction to resolve disputes or to secure a final imprimatur to a water-sharing formula designed by the Tribunal. Given the fact that despite tribunalization, the Supreme Court still plays an essential role in water-sharing disputes, the overall dismal performance of India's tribunal system during the past sixty-five years, and the discordant nature of hydro-politics, there have been suggestions that India adopts the position in the United States where the Supreme Court has original jurisdiction over water disputes between the States.[435] Similarly, under the Commonwealth of Australian Constitution Act, 1900, the High Court of Australia is the forum to settle interstate disputes of any kind, including disputes involving interstate rivers.[436]

Whether India should persist with tribunalization or move to the judicial process at the Supreme Court level must be examined considering a 2016 decision of India's Supreme Court.[437] But before examining the fundamentals of this decision, it is pertinent to have an overview of the Supreme Court's appellate jurisdiction. The Supreme Court of India has broad appellate jurisdiction invokable by a

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[431] *Id*. at ¶ 5.13.
[432] *Id*. at ¶ 5.22.
[433] *Id*. at ¶ 3.6.
[434] *Id*. at ¶ 19.
[435] U.S. CONST. art. III, § 2.
[436] *Australian Constitution* ss 75 & 76.
[437] State of Karnataka v. State of Tamil Nadu, (2017) 3 SCC 362.

certificate granted by the concerned High Court over any of its judgement, decree or final order in both civil and criminal cases involving substantial questions of law that require constitutional interpretation.[438] However, these appellate powers' ambit is limited to a High Court decision or order and to the certificate that it issues. The mandate of Article 136 of the Constitution considerably enhances the potency of the appellate powers. Under the said article, an aggrieved party can directly knock on the doors of the Supreme Court seeking its special leave to hear an appeal against "any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal"[439] that exists in the country. Thus, the appellate jurisdiction's amplitude under Article 136 is of the broadest nature since it can be invoked against an order or judgement of any court (not restricted to the High Court) or Tribunal.

Nevertheless, it is a discretionary power vested in the Supreme Court, and the aggrieved party cannot claim special leave to appeal under Article 136 as a right. Therefore, in its discretion the Court can refuse to grant leave to appeal. In other words, there is an element of uncertainty in the process as the appeal is not automatic.

Right after the CWDT passed its award in 2007, some of the States submitted references to the Tribunal under section 5 (3) of the ISRWD Act. Meanwhile, Kerala, Karnataka and Tamil Nadu filed special leave petitions before the Supreme Court assailing the Tribunal's award.[440] Since the Supreme Court took cognizance of the matter, rendering it sub-judice, the Tribunal could not proceed with the references. Before the Supreme Court, the Union of India contended that these appeals were unmaintainable primarily because of the restriction imposed by article 262(2) and section 11.[441] However, the Supreme Court rejected this argument and held that the bar to its jurisdiction was for taking cognizance of an original water dispute or complaint.[442] It did not encompass an appeal under Article 136 against an order of a tribunal that has exercised original jurisdiction to adjudicate a water dispute.[443] Once a water dispute is adjudicated, it no longer falls into the category intended to be covered either by Article 262(1) or s. 11.[444] Furthermore, section 6(2) of the ISRWD Act provides that once the Central Government publishes the Tribunal's decision in the Official Gazette, it will have the same force as an order

[438] India Const. arts. 132, cl. 1; 133, cl. 1; or 134.
[439] *Id*. at art. 136.
[440] State of Karnataka v. State of Tamil Nadu, (2017) 3 SCC 362, at ¶ 1.
[441] *Id*. at ¶ 4.
[442] *Id*. at ¶ 53.
[443] *Id*. at ¶ 66.
[444] *Id*.

or decree of the Supreme Court. In the Cauvery matter, the Central Government notified the award in 2013. This being the statutory position, the Central Government contended that it was impossible to maintain the appeal, as the idea of intra-court appeal is alien to India's jurisprudence. However, this contention was repelled. It held that section 6(2) could not be mechanically interpreted, and its primary purpose was to give the Tribunal's award binding effect. The Parliament created this fiction for a limited purpose, and there was no intention to proscribe the Supreme Court's jurisdiction. The words "same force as an order or decree" in Section 6 (2) cannot be interpreted to mean that the Tribunal's order or award is as if the Supreme Court has adjudicated the matter.[445] The Parliament's intention in using such language was to ensure that the Tribunal's award would be executed or abided to as if it were a decree or order of the Supreme Court.[446] In 2018, the Supreme Court further cemented the reasoning when it heard the merits of these appeals and provided its imprimatur to the Cauvery Water Disputes Tribunal's final award, subjecting it to certain modifications in terms of water allocation.[447]

The Supreme Court ruling has practically re-engineered and re-written the engagement rules relating to inter-state river water disputes resolution. It has taken the wind away from the sails of the statutorily recognized right of reference available to the parties. They can now seek the Supreme Court's special leave to appeal against the Tribunal's decisions. In one stroke, it seems that the Supreme Court has rendered redundant the constitutional mandate of article 262(2) and sections 11, 5(3) and 6(2) of the ISRWD Act, thereby digressing from the original legislative intent.

Similarly, while it is difficult to predict the actual import with exactitude, the admission of matters in the Supreme Court by not characterizing them as water disputes adds yet another layer of constitutional complexity, as was the case in the Mullaperiyar dam safety matter and the construction of the SYL canal.[448] These disputes are in pith and substance integrally connected to water and disputes between States over the same.[449] More recently, a writ petition was filed by the State of Andhra Pradesh against the Union of India and others regarding Krishna water sharing.[450] The writ was filed under Article 32 of the Constitution, presumably to protect the fundamental

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[445] *Id*. at ¶ 69.
[446] *Id*. at ¶ 76.
[447] The State of Karnataka v. State of Tamil Nadu, MANU/SC/0126/2018.
[448] *See supra* text accompanying notes 195-200.
[449] *Id*.
[450] The State of Andhra Pradesh v. Union of India, Supreme Court of India, W.P.(C) No. 772/2021 Filed on 14-07-2021 (pending).

rights of the citizens residing in Andhra Pradesh, including their right to life and water for drinking.[451] In reality, this dispute relates to Telangana's violation of the Bachawat Tribunal Award (Krishna I), the Andhra Pradesh Reorganization Act, 2014 and non-notification by the Union regarding matters over which the Krishna River Management Board can exercise jurisdiction.[452] The States may henceforth prefer to recalibrate their inter-State water disputes as matters which *sensu lato* fall beyond the term water disputes under the ISRWD Act and as involving Article 21 (water rights of citizens).[453] Such a course of action may enable them to bypass procedural and other legal requirements and directly approach the Supreme Court under Article 32 for remedies.

In 2019, the Central Government introduced the Inter-State River Water Disputes (Amendment) Bill, 2019,[454] to overhaul and streamline the adjudicative process and render the legal and institutional architecture related to water tribunalization more robust and responsive. The Lok Sabha (Lower House of India's Parliament) passed this Bill. However, it is yet to be introduced in the Rajya Sabha (Upper House) and remains in limbo. At this juncture, an overview of some of its salient features is in order as it reflects the current thinking of the Union to persist with the tribunal system subject to minimal streamlining.

A striking feature of this Bill is that when a request under section 3 is received from any State Government, the Central Government must set up a Disputes Resolution Committee (DRC) to resolve the dispute by negotiations within a year,[455] extendable by six months.[456] The DRC submits its report to the Central Government. If the DRC cannot settle the water dispute, the Central Government refers it to the Tribunal for adjudication within three months.[457] Thus, the Bill incorporates negotiation into the system on a more formal basis and ensures timeliness. Apart from negotiation through the DRC, the parties have the right to settle at any time during the adjudication.[458]

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[451] Pleadings filed by the State of Andhra Pradesh in The State of Andhra Pradesh v. Union of India, Supreme Court of India, W.P.(C) No. 772/2021 Filed on 14-07-2021 (pending) (on file with the author).
[452] *Id*.
[453] *See* A.P. Pollution Control Board II v. M.V. Nayudu, MANU/SC/2953/2000 at ¶ 3 (holding that right to access drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens).
[454] The Inter-State River Water Disputes (Amendment) Bill, 2019, Bill No. 187 of 2019 (July 15, 2019).
[455] *Id*. at § 4A (1) and § (3).
[456] *Id*. at § 4A (3).
[457] *Id*. at § 4A (5).
[458] *Id*. at § 13.

Presently, the ISRWD Act contemplates multiple specialized tribunals to deal with several inter-state river water disputes. When the ISRWD Act was framed, it was felt that water disputes would be infrequent and that there would not be enough work to justify a permanent tribunal. Therefore, the ISRWD Act's drafters proposed an ad hoc tribunal system that would spring into action as and when necessary.[459] However, the increase in the number of disputes necessitated the creation of many tribunals. And each time, the States had to approach the Union to exercise its discretion. This has led the system to become highly protracted and expensive. Accordingly, the 2019 amendment provides a single standing tribunal named the "Inter-State River Water Disputes Tribunal" with multiple Benches.[460] As and when this Tribunal is established, all existing Tribunals were to be dissolved, and pending water disputes were to be transferred to it.[461]

The Bill proposes to alter the current composition of the Tribunal. Henceforth, it will consist of a Chairperson, a Vice-Chairperson and not more than three judicial and three expert members.[462] Only a person who is, or has been, a Supreme Court Judge or a High Court Chief Justice can be appointed as the Chairperson or Vice-Chairperson.[463] A sitting or a retired High Court Judge is qualified to be appointed as a Judicial Member.[464] The Expert members should be a Central Government officer of the rank of Secretary or equivalent.[465] Renowned international or national experts in international or inter-State river water disputes can also be appointed.[466] Besides, there is a provision to appoint two assessors, not below the Chief Engineer's rank serving in the Central Water Engineering Service to advise the Bench.[467]

The Chairperson constitutes and assigns the dispute to one of the Benches.[468] A Bench consists of the Chairperson or Vice-Chairperson as the presiding officer, judicial member, and expert member.[469] After considering the DRC report,[470] the Bench

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[459] LAHIRI, *supra* note 151, at 238.
[460] The Inter-State River Water Disputes (Amendment) Bill, 2019, Bill No. 187-C of 2019, § 3 (July 31, 2019).
[461] *Id.* at proviso to § 3.
[462] *Id.* at § 4 B (1).
[463] *Id.* at § 4 B (3) (a).
[464] *Id.* at § 4 B (3) (b).
[465] *Id.* at § 4 B (3) (c).
[466] *Id.* at § 4 B (3) (c).
[467] *Id.* at § 5.
[468] *Id.* at § 4 & Proviso. to § 4 E (1).
[469] *Id.* at § 4 E (1).
[470] *Id.* at § 4.

investigates the water dispute. It forwards its detailed report to the Central Government, setting out the facts and giving its decision within two years.[471] This report should also provide for water distribution during times of distress.[472] If the Bench cannot produce the report within the prescribed time-frame, the Central Government can extend its life by another year.[473] Once the Bench submits its report, the Central Government can disband it.[474] Another feature of this Bill is that it strengthens the existing provisions on "data bank and information system."[475] Section 6 of the 2019 Bill is noteworthy as it proposes to re-cast the existing section 6 in the ISRWD Act 1956. It reads, "[t]he decision of the Bench of the Tribunal shall be final and binding on the parties to the dispute and shall have the same force as an order or decree of the Supreme Court." Thus, the Bill seeks to do away with the publication requirement, which, as seen earlier, is a source of intense contestation. By doing so, it affords finality to the decision. In sum, this Bill reveals the desire of the Union to streamline the tribunal process. Its most striking feature is that it tries to ensure that adjudication is time-bound, provides negotiation with a more normative foundation, and seeks to iron out the law's wrinkles that lead to the delay.

Nevertheless, one of the major drawbacks of the 2019 Bill is that it does precious little to expressly clarify the legal position muddled by the 2016 decision of the Supreme Court. It practically does nothing to de-obfuscate the confusion as the reference clause remains untouched. Of course, the Supreme Court has not expressly struck down the reference provision for want of constitutionality. Many water experts feel that the practical import of the judgement was to eviscerate the provisions' literal meaning and render reference to the Tribunal superfluous.[476] However, this argument ignores the exact nature of the SLP process under article 136. Before opening its gates to the litigant, the Supreme Court first decides in its discretion whether it should grant or deny the requested special leave. In other words, special leave is not a guaranteed right. And therefore, if the reference provided is removed from the ISRWD Act's text and if the Supreme Court in its wisdom denies special leave, the parties will find themselves in a curious

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[471] *Id.* at § 4.
[472] *Id.* at § 4.
[473] *Id.* at § 4A.
[474] *Id.* at § 10.
[475] *Id.* at § 8.
[476] *See* Srinivas Chokula, *Bill for Speedy Resolution of Water Disputes Should Factor in Recent SC Verdicts,* THE NEW INDIAN EXPRESS, Nov. 2, 2019 (pointing out that a major blind spot in the bill is that it does not consider the Supreme Court ruling that effectively establishes its jurisdiction over inter-state water disputes).

situation of having recourse to no remedy. By retaining the reference provided in the ISRWD Act, such undesirable situations are avoided.

Inter-state water dispute adjudication in India occurs in two stages. In the first instance, the Tribunal decides the matter. After that, at the second stage, the Tribunal answers any reference preferred by the parties. This was the general pattern with all the tribunal awards prior to the Cauvery litigation. Since then, the Supreme Court has established special leave appellate jurisdiction over interstate river water disputes even though a literal interpretation of the legislative provisions in the ISRWD Act indicates otherwise. Given India's constitutional jurisprudence's unique nature, where judicial review is a part of the Constitution's basic structure, such matters will now inevitably be taken up to the Supreme Court. The second stage is thus modified. Presently, it seems that several courses of action are available to the parties once a tribunal decides on a water dispute. First, they can prefer a reference to the Tribunal without appealing to the Supreme Court. In such circumstances, once the Tribunal answers the reference, the parties can accept or move the Supreme Court under its special leave appellate jurisdiction. Second, they can move a special leave appeal directly to the Supreme Court instead of invoking the Tribunal's reference jurisdiction. However, there is an element of risk and uncertainty as special leave is grounded on the Court's discretion. Third, they can file a reference before the Tribunal and simultaneously move the Supreme Court. In such circumstances, even if the Supreme Court denies the special leave, the parties can fall back on the Tribunal to answer the reference. This now seems to be the most preferred path open to the riparian States. For instance, in the Mahadayi water dispute, Tribunal submitted its report on September 14, 2018. By the end of November that year, the States of Goa, Karnataka, and Maharashtra filed references under section 5(3) of the ISRWD Act before the Tribunal. The Central Government filed for reference in January 2019. While these references were before the Tribunal, Maharashtra, Karnataka, and Goa filed special leave petitions before the Supreme Court, which are pending.[477] Similarly, in the Vansadhara dispute, the Tribunal submitted its report in September 2017. Thereafter, the State of Odisha and the Central Government filed references before the Tribunal. As well, the State of Odisha has also preferred a petition for special leave to appeal before the Supreme Court.[478]

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[477] *Mahadayi Water Disputes Tribunal*, Ministry of Jal Shakti, Department of Water Resources, river Development & Ganga Rejuvenation, http://jalshakti-dowr.gov.in/acts-tribunals/current-inter-state-river-water-disputes-tribunals/mahadayimandovi-river

[478] *Vansadhara Water Disputes Tribunal*, Ministry of Jal Shakti, Department of Water Resources, river Development & Ganga Rejuvenation, http://jalshakti-dowr.gov.in/acts-tribunals/current-inter-state-river-water-disputes-

Once the matter is taken to the Supreme Court in special leave appeal, it joins the serpentine queue of matters that clog the court's cause list. Eventually, it takes several years before the Supreme Court decides whether the matter should be admitted, and thereafter it still takes more time for the dispute to be finally decided. For instance, the Cauvery matter took nearly eleven years before the appeals were ultimately disposed of. And all this time, while the Supreme Court decides on whether to admit the special leave petition, the Tribunal sits idle, unable to answer the reference as the matter is technically sub-judice, yet another drain on resources – time and money. A classic example is the fate of the Krishna Water Disputes Tribunal – II. Here, because of the pendency of the special leave petition filed against the 2010 original award issued by the KWDT-II, and the Supreme Court's injunction against publication of the final award after the reference was answered by the Tribunal in 2013, the matter continues to languish.[479] In addition, water disputes through re-characterization can now go directly to the Supreme Court under article 32, complicating matters further.[480]

Therefore, given the unique nature of India's federal polity, partisan politics, the technical nature of water disputes, the adversarial and dilatory nature of tribunal proceedings, population growth, urbanization, industrialization, the overwhelming dependence of the population on agriculture for livelihood, and more importantly, climate change, it would seem better if India were to do away with the Tribunal system. Instead, place water dispute matters squarely with the Supreme Court under its original jurisdiction rather than leave it to the vagaries of the judicial process under the special leave appellate jurisdiction. This will help save considerable time and costs, streamline the process, and bring-in consistency. Any counter-argument that the Supreme Court is an over-burdened institution does not hold water, since ultimately, water disputes, despite being determined by the Tribunals in the first instance, inevitably end up in the Supreme Court through circuitous routes.

Thus, transferring inter-state water disputes from the tribunal system to the Supreme Court is logical. Perhaps, the most important advantage of consigning water disputes to the original jurisdiction is that these disputes will receive judicial treatment at the hands of the highest Court of the land. The National Commission to Review the

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tribunals/vansadhara-river-water-dispute; Unreported Order, The State of Odisha v. The State of Andhra Pradesh, Petition(s) for Special Leave to Appeal (C) No(s).27930 of 2019, passed on Jan. 6, 2020 (Supreme Court of India).

[479] *See supra* text accompanying notes 261–273.

[480] *See supra* text accompanying notes 195-200; 448–453.

Working of India's Constitution recommended the repeal of the Inter-State Water Disputes Act, 1956 and the enactment of comprehensive parliamentary legislation with express provisions to ensure that the suit would be instituted in the Supreme Court under its exclusive original jurisdiction.[481] However, as a matter of abundant precaution, and for "being a part of the Constitution as originally enacted," it suggested the retention of article 262 in the Constitution if this experiment failed.[482] In a note submitted to the Commission on Centre-State Relations (2010), Fali S. Nariman, one of India's foremost Water Law Lawyers, also advocated the repeal of the ISRWD Act, 1956 and suggested that the Supreme Court decide water disputes like all other disputes between States under its original jurisdiction.[483]

In this regard, the position in the United States is instructive. As mentioned earlier, the US Supreme Court can hear inter-state water disputes under its original jurisdiction. The procedure is as follows: Once permission is granted to file a bill of complaint in an original jurisdiction matter, including inter-state water disputes, and if there are factual issues that require an evidentiary hearing, the Supreme Court refers the matter to a Special Master.[484] The Special Master "receives evidence, make findings of fact and conclusions of law, and drafts a proposed" report.[485] Thereafter, the parties submit letter briefs outlining their concerns.[486] The Master then produces a supplemental report responding to the challenges raised.[487] Once the Special Master submits his/her report to the Court, the parties can file exceptions to all or certain parts of the report.[488] The Court has the authority to sustain or overrule any exceptions and can revise or approve any of the Special Master's findings, conclusions, or recommendations, wholly or partly.

On similar lines, and based on the discussion in the preceding paragraphs, the following model is proposed to revamp India's inter-state water dispute resolution process. When the Central Government

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[481] JUSTICE M.N. VENKATACHALIAH ET AL., I NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION ¶ 8.11.4 (2002) https://legalaffairs.gov.in/sites/default/files/chapter%208.pdf (last visited Dec. 23, 2021).
[482] *Id.* at ¶ 8.11.5.
[483] COMMISSION ON CENTRE-STATE RELATIONS, SUPPL. I TASKS FORCE REPORTS, (VIEWS EXPRESSED BY F.S. NARIMAN) ANNEXURE- I (2010), http://interstatecouncil.nic.in/wp-content/uploads/2015/06/Suppl_VolI_Task_Forces.pdf. [hereinafter NARIMAN].
[484] L. Elizabeth Sarine, *The Supreme Court's Problematic Deference to Special Masters in Interstate Water Disputes* 39 ECOLOGY L. QUARTERLY 535, 540 (2012).
[485] *Id*.
[486] *Id*.
[487] *Id*.
[488] *Id*.

receives a complaint from a State government that a water dispute (in its broadest connotation) has arisen, it should immediately constitute a Disputes Resolution Committee (on the lines recommended by the 2019 Inter-State River Water Disputes (Amendment) Bill) to resolve the water dispute by negotiations within a year.[489] As mentioned earlier, if not caught up in the rigmarole of hydro-politics, a political settlement is a more fruitful exercise that can lead to win-win situations. However, this cannot be a never-ending exercise. Since States usually have the data to back up their hydro-legal claims, negotiations at the DRC level should conclude within a year, extendable at the Union Government's discretion by a further period of six months. At the end of this period, the DRC should file a report before the Central Government containing the negotiated settlement, or if the parties are unable to settle, then the report should set out all relevant facts, data, the stance of the disputant States, and the Committee members' views.[490] Thereafter, the matter should proceed to the Supreme Court under its original jurisdiction. The Chief Justice should appoint a former Supreme Court Justice as a Special Master at this stage. The Special Master should be assisted by two former Chief Justices of High Courts and two assessors. It would be advisable to appoint different Special Masters for different water disputes. After duly considering the DRC report, the Special Master should investigate the dispute and develop a detailed report and decision within a year, extendable for a further period of six months at the discretion of the Chief Justice of India. Since the "investigation" into the water dispute by Special Master must be expeditious, lawyers' legal arguments and stratagems should not fetter it. Therefore, before the Special Master, legal representation should be limited to legal issues that may be bought up at the end and not initially.[491] Once the Special Master produces the report, the matter should be treated as ripe for the Supreme Court's final intervention. Based on this report, the Supreme Court should decide and pronounce its judgement.[492] Parallelly, all along, the parties should have the right to bring about a negotiated settlement to the dispute. All this will ensure that the process is streamlined and timely, and, in this manner, cooperative water federalism can be sustained and strengthened.

V. CONCLUSION

[489] The Inter-State River Water Disputes (Amendment) Bill, 2019, Bill No. 187-C of 2019, § 4A (July 31, 2019).
[490] *Id.*
[491] NARIMAN, *supra* note 483.
[492] Suitable amendments may have to be made to the Supreme Court of India Rules, 2013; Supreme Court of India, G.S.R. 368(E) (Issued on May 27, 2014).

An apocalypse is around the corner for India if water bureaucrats and lawmakers continue to turn a nelson's eye to the writing on the wall. There must be a course correction to ensure adequate water management for water security and to alleviate water stress. One crucial area that requires attention is the nature of India's water federalism and its related legislative apparatus. In this regard, two fundamental questions were posed to underpin this discourse: whether the subject of water should be transferred from the State List to the Concurrent List and should the tribunal system be replaced by the Supreme Court's judicial process. Evident from the above analysis, it makes sense to retain and persist with the present constitutional arrangement on water management. Water should continue to remain a State subject because water management engenders a host of issues like people's participation, conservation, quantity and quality control, recharge, flood management, safety, agriculture and irrigation development, and afforestation that are by nature primarily local.

There is also global recognition of the need for a bottom-up approach to resource management (the principle of subsidiarity), including water. As part of recognizing and operationalizing decentralized water management, the States have devolved and endowed local self-government institutions with appropriate powers over water management matters. Excessive centralization may run afoul of these developments. It is not that as the constitutional scheme stands, the Central Government has no powers over water. The Central Government's powers over interstate waters are significant, and over the years, the powers relating to all waters, including intra-state waters, have expanded. As well, the manner in which federal water relations have unfolded in India does not inspire confidence that the Central Government will not be swayed away by the tides of hydro-politics and will play a more effective, impartial, and dynamic role in water management. For one, the Central Government has generally avoided any proactive approach towards basin-level governance and has allowed the River Boards Act, 1956, to be euthanized. It has also confined its role in setting up Tribunals, too often, when nudged by the judiciary. As seen earlier, in the context of inter-state water disputes, when recalcitrant States disobey the constitutional mandates and Supreme Court directives and proceed to act as if it has no obligations to other States or to the nation as a whole, the Union due to lack of a political will has often remained a mute spectator. The Union has not often stepped in to steer things right, allowing the dispute to veer of its course. Given the criticality of water, on balance, if the present constitutional equation is altered as what the Supreme Court has attempted to do in the context of river-linking, it will only serve further to denude the power available to the States over water. Such a course

of action is nothing less than a drastic distortion of the nature of India's federalism.

The Interstate River Water Disputes Act, 1956, has been on the statute books for almost sixty-five years. As the discussion reveals, this law and its operational specifics have done a great disservice to water federalism during this period. It has rendered the process to an outcome that is more or less obvious, unpredictable and unstructured. The law relating to inter-state river water disputes resolution in India is procedural, fragmented, archaic, and anti-environment, and it accentuates iniquitous water distribution. Its design is such that it unwittingly facilitates acutely discordant hydro-politics. It is ineffective and is a bottleneck to efficient water management. The structural biases latent in its foundations, to a certain degree, accounts for and have precipitated water conflicts and abject conditions. The law falls short in providing authoritative guidance for effective water dispute resolution. The tribunal system that it engenders has also failed to produce sustainable results and viable solutions. As it stands, the wheels of justice in relation to water disputes grind painfully slow. It moves at a snail's pace through the Tribunal, and, finally, there is a possibility that it can now end up in the Supreme Court under its special leave appellate jurisdiction. This undue delay at both stages and the uncertainty that the special leave appellate jurisdiction entails does not behoove sustainable water development. The people in the basin states are left with limited opportunities to organize their water relations in a conducive and amicable atmosphere. Accordingly, there is a need to recalibrate the system. In this context, one has to consider the proposal to do away with the tribunal system and ensure that water dispute resolution occurs at the Supreme Court level under its original jurisdiction as in classical federations with all the seriousness that it demands. Conflictual federalism must give way to co-operative and competitive federalism. How India's States and its Union Government will resolve water conflicts in a rapidly warming world will very well determine the future of water federalism, the unity and integrity of this country, the extent to which the aspirations of the people who inhabit the territorial entity called State will be realized, and, ultimately, the rivers' fate upon which all these interests coalesce.

APPENDIX: TABLE 1

S. No.	**1.**	**2.**	**3.**
Name of the Tribunal	**Krishna Water Disputes Tribunal -I**	**Godavari Water Disputes Tribunal**	**Narmada Water Disputes Tribunal**
Concerned States	Maharashtra, Andhra Pradesh, Karnataka, (Orissa & Madhya Pradesh were parties, but discharged subsequently)	Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh, & Odisha	Rajasthan, Madhya Pradesh, Gujarat and Maharashtra
First Request received by the Central Government	Karnataka (Mysore) initiated the request in January 1962.	Karnataka (*then* Mysore Government) in January 1962	Complaint filed by the State of Gujarat on July 6, 1968
Date of Constitution	April 10, 1969	April 10, 1969	October 6, 1969
Present Status & Relevant Details	Unanimous report forwarded to the Gov' t of India on December 24, 1973	Award given on July 1980	Award delivered on December 7, 1979. Reviewable at any time after 45 years from the date of publication of the Award of the Tribunal in the official gazette.
Were subsequent references filed? If yes, were they answered?	References filed by Maharashtra on July 18, 1970. Others also filed reference. References answered on May 27, 1976.		
In the Supreme Court		State of Andhra Pradesh v. State of Maharashtra, (2013) 5 SCC 68 (Decided on February 28, 2013)	

4.	5.	6.
Ravi & Beas Water Tribunal	**Cauvery Water Disputes Tribunal**	**Krishna Water Disputes Tribunal -II**
Punjab, Haryana and Rajasthan	Kerala, Karnataka, Tamil Nadu and Puducherry	Karnataka, Telangana, Andhra Pradesh and Maharashtra
Under the Rajiv-Longowal Accord of July 24, 1985, the ISRWD Act was amended to insert S.14, and a three-Member Ravi & Beas Water Disputes Tribunal was set up in April 1986	The government of Tamil Nadu requested for a Tribunal through letter dated July 6, 1986. However, Supreme Court had to direct the constitution of the Tribunal; Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimal Padhugappu Sangam v. Union of India, (1990) 3 SCC 440	Karnataka wrote a letter of complaint dated September 25, 2002, to the Ministry of Water Resources to constitute a Tribunal. The State of Maharashtra also filed a complaint on November 27, 2002.
April 1986	June 2, 1990	April 2, 2004
Report and decision under section 5(2) given in April 1987.	Report and decision was given on February 5, 2007	Report and decision was given on December 30, 2010. The Tribunal gave a further report on November 29, 2013.
A reference was filed, but it remains unanswered	A reference filed, but it remains unanswered	As per the Supreme Court Order dated September 16, 2011, till further orders, the decision of the Tribunal on references cannot be published in the official Gazette. As such, matter is sub-judice.
State of Haryana v. State of Punjab, (2002) 2 SCC 507, In Re: The Punjab Termination of Agreement Act, 2004, (2017) 1 SCC 121	State of Karnataka vs State of Tamil Nadu, (2018) 4 SCC 1 upholding the CWDT award subject to certain modifications	State of A.P. v. State of Karnataka, Special Leave Petition (Civil) No. 10498 of 2011. (Supreme Court of India).

7.	8.
Vansadhara Water Disputes Tribunal	**Mahadayi Water Disputes Tribunal**
Andhra Pradesh & Odisha	Goa, Karnataka and Maharashtra
The state of Odisha filed a complaint on February 14, 2006. State of Orissa v. Government of India, MANU/SC/0144/2009 (SC directs the Central Government to constitute the Tribunal)	Govt. of Goa filed an Original Suit No. 4 of 2006 in the Supreme Court in September 2006, for setting up of a Water Dispute Tribunal. However, during the pendency of this matter, the Government of India approved the proposal to create the Mahadayi Water Disputes Tribunal.
February 24, 2010. However, the date of reckoning of the constitution of the Tribunal is w.e.f. September 17, 2012	November 16, 2010. However, vide notification dated November 13, 2014 date of reckoning of the constitution of the Tribunal is w.e.f. August 21, 2013
Tribunal produced the award in 2017, allowing Andhra Pradesh to construct the Neeradi Barrage.	Report-cum-final decision given on the August 14, 2018. As per the Order of Supreme Court dated February 20, 2020 in I.A. No. 109720/2019 in SLP No.33018/2018, the Central Government has published MWDT Award dated August 14, 2018 in the Gazette of India vide Notification No. S.O. 888(E) dated February 27, 2020.
References were filed. The Tribunal answered the reference on June 21, 2021.	The State of Goa filed an application before the Tribunal on August 20, 2018. Subsequently, the States of Karnataka and Maharashtra filed further references under section 5(3) of the ISRWD Act before the Tribunal later in 2018. The Central Government has also filed further reference under section 5(3) of the ISRWD Act on January 14, 2019. All these are pending before the Tribunal.
SLP No 8030/2018 has been filed against the final award of the Vansadhara Water Dispute Tribunal. Odisha has objected to publishing the final decision of the Tribunal in the official gazette. The matter is now in the Supreme Court.	The States of Maharashtra, Karnataka and Goa filed Special Leave Petitions against the decision of the Tribunal in the Supreme Court.

9.
Mahanadi Water Disputes Tribunal
Odisha and Chhattisgarh
The government of Odisha filed Original Suit No.1/2017 in the Supreme Court of India for the constitution of a Water Dispute Tribunal for adjudication of the water dispute. The Original Suit was disposed of with directions to the Central Government to constitute a Water Disputes Tribunal.
March 12, 2018
The matter is before the Tribunal.