



Interstate River Water Governance: Shifting the Focus from Conflict Resolution to Enabling Cooperation

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Interstate Rivers and National Water Security

India's 29 states and seven UTs (Union Territories) share its 20 major river basins. This simple framing presents how India's water security is embedded in a canvas of deeply interdependent interstate hydrogeographies. The country's water security is defined and determined by how its interstate rivers are governed.

The current state of policy and institutional set-up for interstate river water governance, however, does not inspire confidence. Interstate river water disputes emerge and recur frequently. Their adjudication involves long delays, characterized by adversarial litigations. States often defy judicial directives from either the tribunals or the Supreme Court, leading to constitutional crises. Implementation of the tribunal awards/decisions suffers from an acute absence of reliable interstate

institutional models or mechanisms. Each escalation or recurrence of disputes causes huge costs to the economy. Antagonistic politics and politicization characterize interstate river water relations.¹ On the other hand, the implementation of interstate river development projects and rejuvenation programmes, too, is impaired by the larger void of a robust ecosystem for interstate coordination or collaboration.

The history of interstate river water governance of India partly explains this state of affairs. Since Independence, such governance has been driven by exigency-driven contingent responses. The policy ecosystem is primarily set to respond to the exigencies of conflicts and has remained oblivious to the idea of interstate cooperation. There is practically no reliable mechanism for interstate coordination and collaboration over river

waters. A simple fact attests to this assessment. The Interstate (River) Water Disputes Act, 1956, for resolving interstate river water disputes has been amended at least a dozen times. Yet another amendment Bill was tabled before the Parliament in 2018. In contrast, the River Boards Act, 1956, enacted at the same time as the former and meant to enable interstate collaboration, has never been touched since its inception. Further, it has never been used to create any boards, not even once! For some inexplicable reason, the river boards created so far draw on alternative and ad hoc channels – of notifications of the government, state-bifurcation laws or separate Acts of Parliament. The Act has remained untouched even when it was found unusable for the purpose for which it was intended.

The constitutional division of powers with respect to water and its implementation is the other reason. The subject of water is listed under Entry 17 of the State List. This, however, is subject to Entry 56 of the Union List pertaining to the regulation and development of interstate rivers.² In the initial years of single-party dominance, the negligence in definitively carving out the Centre's role has led to the states assuming unfettered and exclusive powers over water governance. Ramaswamy Iyer has called it the 'wilful abdication of its role' by the Centre.

This trajectory of evolution has contributed to the entrenchment of territorialized perceptions and competitive approaches of states towards water resource development. This has been aided generally by the transformation of Indian state and polity over the years. The initial single-party dominance has given way to coalitional politics, leaving greater room for subregionalism and territorialized assertions of states.

An outcome of this for the center-state relations over water governance is the increasing resistance of states to any attempt by the Center to assert its role under the Entry 56, over interstate river water governance. Central institutions like Central Water Commission (CWC) and Central Ground Water Board (CGWB) are perceived to be increasingly irrelevant. States pursue their respective territorial visions of water resource development with little or no appreciation for the cumulative impact, with adverse implications for national water security.

Ambitious Plans and Ambiguous Foundations

Several practical reasons necessitate this revisiting of interstate river water governance with particular focus on Centre-state relations. The country has set itself ambitious plans for greater economic growth, and these depend on strong and reliable interstate river water cooperation. These plans have both development and conservation goals. The development projects are not just the conventional supply augmentation, but also include inland waterways. Over 105 proposed inland waterways pose new challenges for interstate river water governance.³ The controversial interlinking of rivers has received patronage from consecutive governments, yet has not made much headway, partly due to the hurdles of interstate coordination.

The flagship programme of Ganga rejuvenation is a response to the intensely stressed river ecosystems. It has received unprecedented attention and investments. Yet the 'blind spot' with respect to the tenuous Centre-state and interstate relations remains an unaddressed challenge. Fully funded by the central government, this programme may have some temporary impact. But sustaining it over a longer term will require a deeper institutionalization of the programme among the states, in addition to closer interstate coordination and collaboration.

The necessary strategic shift towards broader Integrated Water Resource Management (IWRM), also proposed by the National Water Policy 2012, will itself require a consensus among states. A simple articulation of national policy will not achieve compliance by states. The historical geographies of uneven water resource development among states will require deliberations over the trade-offs in shifting to IWRM. The shift has to be led by the Centre with the consent of the states.

Above all, there are the new challenges of coping with climate change-linked risks. This big unknown adds to the problem of interstate coordination with its uncertainties over space as well as time. Interstate collaboration and cooperation is central to coping with the risk of disasters such as floods.

Shift Focus to Enabling Cooperation

In order to realize the development goals of these ambitious projects, and in the interest of longer-term water security, the government has to begin proactively engaging with the challenge of interstate river water governance. This requires a fundamental strategic shift, away from the current reliance on conflict resolution, and making deliberate efforts to enable and nurture an ecosystem for interstate river water cooperation. Such an ecosystem is useful for dispute resolution as well in essential terms. Interstate river water dispute resolution often fails because there are no reliable mechanisms for implementing the tribunal awards or decisions. It can only be possible when the states party to a conflict collectively contribute to 'giving effect' to the decisions. Thus, interstate river water cooperation ecosystem is a necessary condition for effective conflict resolution.

This intricate link, in fact, accentuates the emerging understanding about the nature of transboundary relationship when rivers are shared between territorial entities. The binary of either conflict or cooperation is a flawed premise to address the challenges of transboundary river sharing. Instead, it is increasingly evident that the complex political ecology of transboundary river water sharing constitutes a coexistence of conflict and cooperation.⁴ The design of policy and institutional solutions has to acknowledge this character, and cannot rely on legal instruments alone. It has to be supplemented with other elements of the ecosystem: policy, institutions and politics.

First, there has to be clearly articulated policy intent. The next iteration of the National Water Policy must declare the creation and nurturing of an ecosystem for interstate river water cooperation as one of its priorities, and enunciate specific steps towards setting the process in motion.

Second, politics have to make the policy reforms possible. In view of the historical evolution of Centre-state water relations in practice, the policy and institutional reforms for interstate cooperation will have to be built on a political consensus for adoption of this path. In other

words, the water agenda has to be elevated for a federal consensus, say, along the lines of the GST reforms. At the core of this consensus will be the need for the Centre to (re)position itself. The political process has to aim at redefining the Centre's role under Entry 56 of the Union List, considering the emerging challenges of interstate river water governance. This does not mean reorganizing the constitutional division of powers, which is likely to face vehement resistance from states. Instead, the goal will be to redefine the existing Centre-state division of powers in terms of functional and operational responsibilities required to pursue the ambitious plans and programmes. For instance, the Union government may assume a preminent role in credible data gathering and providing knowledge and capacity inputs.

The idea of building federal consensus for water reforms is not new. The need for such a political process and forum was felt before as well. For instance, the National Water Resources Council has been created under the aegis of the Ministry of Water Resources. The National Development Council is another forum for such federal deliberations. These forums failed to deliver for a variety of reasons. A key reason is their failure to assuage states about their neutrality and objectivity in enabling deliberations; they are perceived as politically subjective and serving the agendas of the particular political regimes in power.

The Inter-state Council may be nurtured as an institutional space for these federal deliberations. The Constitution provides for the Inter-State Council for the specific purpose of interstate coordination. This crucial federal forum has been neglected and undermined due to its ill-conceived purpose and location. The Inter-State Council has been ill conceived as a department of the Ministry of Home Affairs and is seen as politically subjective. Instead, it should have been conceived and cultivated as an institution at par with other institutions serving key constitutional functions for deliberative democracy.

Article 263 providing for the Inter-State Council incidentally follows the peculiar Article 262 that provides for barring the jurisdiction of the Supreme Court. The constitutional framers were conscious of the limitations

of the courts in addressing challenges posed by interstate river water disputes; they also realized that a robust deliberative process is essential for their resolution. The success stories of water reforms in other comparable federal contexts—for example, Germany or Australia—are often celebrated. Central to these success stories is a strong institution offering a space for federal deliberations: the LAWA (Working Group of the Federal States) in Germany, or the COAG (Council of Australian Governments) in Australia. The Inter-State Council has to serve a similar function to pursue the proposed reforms. Just like these deliberative spaces, the Inter-State Council can be a permanent deliberative forum to take forward reforms. The Council's scope, however, may not be restricted to water resources; it can have working groups for different sectors serving the purpose of interstate coordination.

The third element is to develop strong and resilient institutional models for interstate coordination, compliance or collaboration—primarily to give effect to any interstate project, programme or agreement. A River Basin Management Bill, 2018, has been proposed for the purpose, replacing the River Boards Act, 1956. But it assumes that centrally driven river basin authorities can serve these functions. Some states have already resisted this conception. It is unlikely that these authorities will be effective without a consensus about the functional roles of the Centre and states, and the operational domain of river basin authorities. The Bill does not build on such a consensus; instead, it assumes that inclusion of representations from states is sufficient to make the institutions work. River Basin Authorities, or any other forms of interstate institutional models, need to emerge from and build upon the contours of the respective functional spaces emerging from the federal consensus. An enduring and empowered deliberative forum, such

as the Inter-State Council, will enable such consensus building and evolution of collaborative solutions.

The fourth factor is pursuing an effective strategy for interstate river water disputes resolution. This requires a course correction. A historical understanding of the unusual approach—of barring courts' jurisdiction and setting up tribunals for adjudication—reveals that these arrangements were conceived with the intent of ensuring finality to the resolution, in a swift manner. Deliberative approaches were integral to tribunals' adjudication of the disputes. This was the approach used by the first generation of tribunals, constituted for Krishna, Godavari and Narmada disputes. Over time, the subsequent amendments to the Act have turned tribunals into courts and have increasingly incentivized adversarial litigations. This is one of the reasons for extended delays in giving away awards. The recent decision of the Supreme Court modifying the Cauvery tribunal award is just another instance of this trend. Extending Supreme Court's jurisdiction opens up additional layers of judicial litigation. The processes of adjudication by tribunals needs to be reviewed, with due attention to courts' limitations in addressing interstate river water disputes. The Centre must consider strengthening the adjudication with deeper integration of deliberative processes, and building on the cooperation ecosystem. The Interstate River Water Disputes Amendment Bill, 2018, by proposing a Permanent Tribunal, has made a feeble attempt to incorporate this element, while continuing with the adversarial character of tribunals' functioning. A Disputes Resolution Committee has also been proposed, to attempt resolution through mediation. Its proposed composition, however, does not inspire confidence.

END NOTES

1. To illustrate, the Supreme Court is currently deliberating on the suit filed by the Tamil Nadu for a compensation of about INR 25,000 crore for crop losses due to alleged failure of timely release of Cauvery waters by Karnataka in just one season.
2. This was the basis for enacting the River Boards Act, 1956.
3. The National Waterways Act, 2016
4. N. Mirumachi, *Transboundary Water Politics in the Developing World* (Oxford: Routledge, 2015).