

# INTER-STATE RIVER WATER DISPUTES (AMENDMENT) BILL, 2017

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## Abstract

On 14 March 2017, the Inter-State River Water Disputes (Amendment) Bill was introduced on the floors of Lok Sabha by the present Water Resources Minister, Uma Bharti. The Bill seeks to fix all the lacunae that are present in the current water disputes redressal system. In the present paper, the Bill is evaluated in detail and the future repercussions of the same are estimated. It pursues to answer the question whether the Bill is an appropriate step towards solving the current water crisis among the states or is it a futile effort of the government in response to the growing pressure by the states.

## Introduction

The law-makers have provided adequate legal machinery to deal with the river water disputes and issues in the Constitution and other statutes.

Entry 17<sup>1</sup> of the State List includes water as one of its subjects. However, this jurisdiction of the state is subject to Entry 56<sup>2</sup> of the Union List, under which the Union can make a law relating to water in public interest.

The Constitution of India has provided the Parliament the right to legislate laws for adjudication of water related disputes.<sup>3</sup> The same article also states that the Parliament can exclude jurisdiction of the Supreme Court or any other court. In exercise of this power, the Parliament enacted two laws.

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1 Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.

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

3 *Id.*, at Article 262.

The *River Board Act, 1956*<sup>4</sup> established certain River Boards that work to provide parameters for advancement of Inter-state River and river valleys. However, since the adoption of the Act, the government has failed to establish a single River Board.

Another act that was brought in was the *Inter-State Water Disputes Act, 1956*<sup>5</sup>. The legislation was adopted for regulation on 'use, control and distribution' of inter-state water. The Act provides for an alternative dispute resolution system in form of tribunals<sup>6</sup>. They have been given the powers of a civil court; however, their verdict has the same effect as that of the Supreme Court. The 2002 Amendment<sup>7</sup> brought a change wherein new tribunals could change the decisions of a previous tribunal.

Despite this, the government has been unable to create an effective mechanism that could solve water-related disputes. In light of these issues, the government has introduced a new bill as a step towards establishing a permanent forum for sensitive water-sharing matters.

### **Inter-State River Water Disputes (Amendment) Bill, 2017**

For years, the governments have been thinking of forming of a permanent medium to develop consensus among states on the sensitive water-sharing issues prevailing before the country.<sup>8</sup> Therefore, considering the growing distress among states in relation to sharing of water, the Union Minister, Uma Bharti introduced this Bill in Lok Sabha as a 'revolutionary step'<sup>9</sup> towards resolution of such disputes. Each provision of the Bill is discussed in detail below.

#### **1. Dispute Resolution Committee**

In the Act, after a complaint by the states, the Union may ask the states to solve the dispute through negotiations. If the same is unable to be resolved, the Government may set a Water Tribunal for them.<sup>10</sup>

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<sup>4</sup> Act No. 46 of 1956.

<sup>5</sup> Act No. 33 of 1956.

<sup>6</sup> See Section 4 of the Inter-State Water Disputes Act, 1956.

<sup>7</sup> Act No. 14 of 2002.

<sup>8</sup> Vibha Sharma, Permanent forum to solve state water disputes, *The Tribune*, 3/10/12.

<sup>9</sup> Press Information Bureau, Government of India, Ministry of Water Resources, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=159201,16/06/2017,2:36>.

<sup>10</sup> *Supra* note 7.

The Bill adds Section 4A to the original act for a new commission for amicable resolution of water-related issues that arise among states.<sup>11</sup> On request of any State Government, the Central Government shall have the duty to set up a Dispute Resolution Committee. The committee would be composed of members from 'relevant' fields. It is to resolve all problems through negotiations within one year, which may be extended by six months. The committee also must submit its report to the Centre with contentions of the parties, its views, and the facts and information of the case.

The intention behind establishing this committee, rather than just simply asking the affected to states to negotiate, can be inferred to be to create a more formal forum for negotiation between the disputed parties as Water Resources Ministry secretary, Shashi Shekharsaid that it is expected that most disputes will get resolved at the DRC's level itself.<sup>12</sup> This committee would provide an opportunity to the parties to decide in a more peaceful manner with less stringent legal formalities, before getting involved in a legal battle in a tribunal. The committee is also answerable to the Union as it is to submit a report to it after the said negotiations.

However, there continues to be a bit of ambiguity regarding the composition of the committee as no criteria has been laid down regarding membership. A qualified judge or someone who has been involved in legal matters for years or with experience and knowledge in related field must be appointed. The same could have been echoed in the Bill.

## 2. Inter-State River Water Dispute Tribunal

The Act had provided that in case the negotiations failed, the Centre could set up a Water Tribunal.<sup>13</sup> Till date, there have been eight Water Tribunals formulated, out which three of them have been resolved with acceptance of the states.<sup>14</sup>

The Bill has sought to introduce a substituted Section 4 in the Act to bring an altogether permanent Inter-State River Water Dispute Tribunal to solve all the disputes that are not resolved by the

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<sup>11</sup> See Section 3 of the Amendment Bill.

<sup>12</sup> PTI, Single Tribunal to Decide All Inter-State Water Disputes, The Indian Express, <http://indianexpress.com/article/india/single-tribunal-to-decide-all-inter-state-water-disputes-4433463/>, 16/06/2017, 12:45.

<sup>13</sup> *Supranote 7.*

<sup>14</sup> Prelims Listicles, List of Major Inter-State River Water Disputes in India, Civils Daily, <http://www.civildaily.com/blog/list-of-major-inter-state-river-water-disputes-in-india/>, 16/06/2017, 13:16.

Dispute Resolution Committee.<sup>15</sup> The previous tribunals would dissolve and the cases would transfer to this tribunal.<sup>16</sup> However, already decided cases cannot be re-opened.

This tribunal would be a welcome change as it would help in effective and quick adjudication of matters. Instead of the time lag due to formulation of a Water Tribunal every time a dispute arises, a permanent machinery would always be in place to provide its services to states affected.

#### A. Composition of Tribunal

The Bill sets out that the Tribunal shall have a Chairperson, Vice-Chairperson and up to six members (Judges) nominated by the Chief Justice of India. The Union Government may also appoint two persons with experience in the Central Water Engineering Service, not below the rank of Chief Engineer, as assessors who would counsel and advise the Bench.<sup>17</sup>

The tenure of the Chairperson is fixed for five years or till the age of seventy years, whichever is earlier. While the term of other members, including Vice Chairperson shall be co-terminus with the adjudication of the water dispute and would end on dissolution of bench.<sup>18</sup> The assessors shall hold the office till adjudication of the dispute and till the final report is submitted to the Centre.<sup>19</sup>

The qualifications and composition by the Bill is appropriate and justified. The judges with vast knowledge and experience in adjudicating matters shall increase the expediency of the Tribunal. Adding to that, the provision of appointment of assessors with involvement in Central Water Engineering Service would help in providing an expert opinion to the bench. The fixing of tenure would also make sure that the adjudicators are able to complete their duties without fear or favour.

#### B. Time allotted to take a decision

The Act currently states that a matter before a Tribunal must be decided within three years which may be extended for a maximum period of two years. Also, if a state asks the Tribunal to reconsider

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<sup>15</sup> *Supra*note 13.

<sup>16</sup> Section 11 of the Amendment Bill exempts the Ravi and Beas Tribunal to stand dissolved.

<sup>17</sup> Section 3 and 5 of the Amendment Bill.

<sup>18</sup> Added as Section 4C into the Inter-State River Disputes Act, 1956 in the Bill.

<sup>19</sup> Added as Section 5C to the Inter-State River Disputes Act, 1956 in the Bill.

the decision, the Tribunal must submit its report to the Union within a year, which may be extended by the Centre as it may deem necessary.<sup>20</sup>

On the other hand, the Bill provides that a matter is to be decided within two years, the period extendable by one year. In case of reconsideration, the time to submit report to the Centre would be extendable by only six months.

The Tribunals under the Act have taken decades to end and many continue till date; for example, Cauvery and Ravi Beas disputes have been present for more than 26 and 30 years respectively.<sup>21</sup> Reducing the period for their settlement would help in curtailing such delays and cater to the needs of the states' more pragmatically. Fixing of the time for report submission would also prevent matters being extended for indefinite amount by the Government. Thus, this provision would prove beneficial for quick settlement of the trials.

### C. Multiple Benches within the Tribunal

The Bill has also provided for multiple benches in the Tribunal.<sup>22</sup> This would also result in preventing delays and simultaneous decrees and judgments.

### D. Filling of vacancies and temporary absence

Section 5B has been proposed to be added that lays down provision for filling of seats of the Chairperson or any other member.<sup>23</sup>

This provision elaborates upon the one currently in the Act and makes sure there is effective substitution of members in case of such absence or vacancy.

## **3. Publication of decision in the Official Gazette**

The Act states that decision of the Tribunal is to be published in the official gazette by the Union Government. It is only after this that the judgement would have same effect and force as that partied by the Supreme Court.<sup>24</sup>

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<sup>20</sup> See Section 5 of the Inter-State River Disputes Act, 1956.

<sup>21</sup> *Supra* note 11.

<sup>22</sup> Added as Section 5D to the Inter-State River Disputes Act, 1956 in the Bill.

<sup>23</sup> Section 5A of the Inter-State River Disputes Act, 1956 currently lays down the provisions of filling of vacancies.

<sup>24</sup> See Section 6 of the Inter-State River Disputes Act, 1956.

This Bill does away with this unrequired convention of having a judgement published before actually giving effect to it.

#### 4. Agency for maintenance of data bank and information

The Act<sup>25</sup> provided the Central Government to maintain data bank and information at national level with regard to water basins in the country.

The Section has been modified whereby the Centre may employ an agency for the same. Such an agency would prove to be more qualified in collecting such data and may also relieve the Centre with the pressure that it currently faces due to the numerous water disputes.

#### 5. Dissolution of Bench

The amendment under its' Section 9<sup>26</sup> proposes that, on advice of the Chairperson or anyone acting on his/her behalf, the Centre may dissolve the Bench after adjudication and submission of its report. On such a dissolution, the members are to vacate their seats.<sup>27</sup> The staff has to be provided to other Benches and the assets are to be returned to the Centre Government or to the State that provides it.

These Sections help in proper appropriation and allocation of resources at both the Centre and the State level.

#### 6. Additional rule-making powers

The Union Government has been granted with power to make laws on the following matters<sup>28</sup>:

- On the manner in which the water shall be distributed at times of stress situations due to water shortage.
- On which data is to be maintained and in what manner.
- On the manner in which the staff of a dissolved Bench is to be dealt with.

These legislative powers elaborate the role of the Union in water distribution system. The role of the government, in development of the same, cannot be predicted. If the power is used efficiently, the

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<sup>25</sup> Section 9A of the Inter-State River Disputes Act, 1956.

<sup>26</sup> Section 9 of the Amendment Bill calls for substitution in Section 12 of the Inter-State River Water Disputes Act, 1956.

<sup>27</sup> The members who are members of any other Bench are to remain members of that Bench.

<sup>28</sup> Along with those already provided in Section 13 of the Inter-State River Water Disputes Act, 1956.

Government can bring uniformity and consistency in the issues related to water which till date remains under the hand of different State rules and statutes. This uniformity would help in times of stress and shortage of water resources.

However, the same has to be dealt with caution. Water is a state subject. The authority and power of the state should not be infringed upon and the Union must make sure that it remains within the realms of a federal structure of the country.

## Conclusion

“The Inter-State River Water Disputes (Amendment) Bill, 2017 seeks to streamline the adjudication of inter-State river water disputes and make the present legal and institutional architecture robust.”<sup>29</sup> It is in response to the decade-long delays and vague provisions of the Act that haunt the states who are involved in age-old legal battles with each other.

However, the Amendment has at some points failed to answer many questions. There is uncertainty in composition and working of the Dispute Resolution Committee. As Biju Janata Dal (BJD) leader Bhartruhari Mahtab<sup>30</sup> voiced his concerns, the Amendment may be ‘overstepping’ its authority because at the end of the day, water is a state subject. This balance of power must be maintained by the Union so as to make sure that the states are not held at a disadvantage.

Despite the various lacunae and gap holes in the amendment as well, it cannot be denied that the Bill has definitely proven to be a much desirable footstep in the direction of restructuring and reorganization of the current redressal and settlement system for river water disputes in the country.

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5. The River Board Act, 1956

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<sup>29</sup> Statement and Objectives, the Inter-State River Water Disputes (Amendment) Bill, 2017.

<sup>30</sup> IANS, Bill for Permanent Water Tribunal, Business Standard, [http://www.business-standard.com/article/news-ians/bill-for-permanent-water-tribunal-moved-in-lok-sabha-117031400893\\_1.html](http://www.business-standard.com/article/news-ians/bill-for-permanent-water-tribunal-moved-in-lok-sabha-117031400893_1.html), 17/06/2017, 09:30.

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