Off Course

Introduction

The latest political row to erupt in Tamil Nadu is around the Centre’s April 24 notification bringing the Cauvery Water Management Authority under the administrative control of the Union Ministry of Jal Shakti, which was created a year ago by combining two Ministries.

Issues in this Central notification

The Opposition, and some farmers’ associations were upset with the notification on the ground that the move has reduced the Authority to a “puppet” of the Centre.

They point out that the CWMA was created on the direction of the Supreme Court in February 2018. It is also argued that between June 2018-May 2019, when the Union Ministry of Water Resources was in existence, there was no public notification on the CWMA being designated as an organisation under the Ministry.

Weak argument

Such an argument is weak, as the CWMA, a body corporate, has been working all along under the Ministry. Even in the case of its predecessor, the Cauvery River Authority (1998-2013) with the Prime Minister as the Chairman and Chief Ministers of the basin States as Members, the Union Ministry of Water Resources had administrative control.

In fact, the CWMA has had only a part-time head, the chairman of the Central Water Commission (CWC), attached to the Ministry.

Besides, there are eight inter-State river water boards under the Jal Shakti Ministry. Along with the CWMA, four other bodies, including the Krishna and the Godavari Water Management Boards — which have been in existence since 2014 following the re-organisation of Andhra Pradesh — were designated to be under the Ministry.

The formalisation of the CWMA’s status corrects an apparent lapse on the Ministry’s part and addresses administrative issues.

The notification does not, in any way, alter the character, functions or powers of the CWMA that form part of a scheme drawn up a few years ago, and which was approved by the Supreme Court.

Way Ahead

If there is anything the Centre can be blamed for, it is the way the CWMA functions. Even two years after its formation, the Authority does not have a full-fledged chairman.

The Centre would do well to act, at least now, in making the CWMA fully operational, when the southwest monsoon is about to set in.

The parties should realise that electoral gains or losses are not always linked to their stand on any one issue, even if it is the Cauvery, the lifeline of Tamil Nadu’s rice bowl.
Constitutional Provisions to solve the interstate water disputes

Entry 17 of State List deals with water i.e. water supply, irrigation, canal, drainage, embankments, water storage and water power.

Entry 56 of Union List empowers the Union Government for the regulation and development of inter-state rivers and river valleys to the extent declared by Parliament to be expedient in the public interest.

According to Article 262, in case of disputes relating to waters:

a. Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

b. Parliament may, by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as mentioned above.

Mechanism for Inter-State River Water Disputes Resolution

- The resolution of water dispute is governed by the Inter-State River Water Disputes Act, 1956.

# (According to its provisions, if a State Government makes a request regarding any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, then a Water Disputes Tribunal is constituted for the adjudication of the water dispute.)

- The act was amended in 2002, to include the major recommendations of the Sarkaria Commission.

# (The amendments mandated a one year time frame to setup the water disputes tribunal and also a 3 year time frame to give a decision.)

Active River Water Dispute Tribunals in India

- Krishna Water Disputes Tribunal II (2004) – Karnataka, Telangana, Andra Pradesh, Maharashtra
- Mahanadi Water Disputes Tribunal (2018) – Odisha & Chattisgarh
- Mahadayi Water Disputes Tribunal (2010) – Goa, Karnataka, Maharashtra
- Ravi & Beas Water Tribunal (1986) – Punjab, Haryana, Rajasthan

Issues with Interstate Water Dispute Tribunals

- Protracted proceedings and extreme delays in dispute resolution.
  - For example, in the case of Godavari water dispute, the request was made in 1962, but the tribunal was constituted in 1968 and the award was given in 1979 which was published in the Gazette in 1980.
  - The Cauvery Water Disputes Tribunal, constituted in 1990, gave its final award in
Opacity in the institutional framework and guidelines that define these proceedings; and ensuring compliance.

Though award is final and beyond the jurisdiction of Courts, either States can approach Supreme Court under Article 136 (Special Leave Petition) under Article 32 linking issue with the violation of Article 21 (Right to Life).

The composition of the tribunal is not multidisciplinary and it consists of persons only from the judiciary.

The absence of authoritative water data that is acceptable to all parties currently makes it difficult to even set up a baseline for adjudication.

The shift in tribunals' approach, from deliberative to adversarial, aids extended litigation and politicisation of water-sharing disputes.

The growing nexus between water and politics have transformed the disputes into turfs of vote bank politics.

- This politicisation has also led to increasing defiance by states, extended litigations and subversion of resolution mechanisms.
- For example, the Punjab government played truant in the case of the Ravi-Beas tribunal.

Too much discretion at too many stages of the process.
- Partly because of procedural complexities involving multiple stakeholders across governments and agencies.
- India’s complicated federal polity and its colonial legacy.

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

- In order to further streamline the adjudication of inter-State river water disputes, the Inter-State River Water Disputes (Amendment) Bill, 2017 was introduced in Lok Sabha in March 2017 by amending the existing ISRWD Act, 1956.

- The Bill envisages to constitute a standalone Tribunal with permanent establishment and permanent office space and infrastructure so as to obviate the need to set up a separate Tribunal for each water dispute which is invariably a time consuming process.

- In the proposed Bill, there is a provision for establishment of a Dispute Resolution Committee (DRC) by the Central Government for resolving amicably, the inter-State water disputes within a maximum period of one year and six months.

- Any dispute, which cannot be settled by negotiations shall be referred to the Tribunal for its adjudication.

- The dispute so referred to the Tribunal shall be assigned by the Chairperson of the Tribunal to a Bench of the Tribunal for adjudication.

- Under the Bill, the requirement of publication of the final decision of tribunal in the official gazette has been removed.

- The Bill adds that the decision of the bench of the tribunal will be final and binding on the parties involved in the dispute

- The Bill also calls for the transparent data collection system at the national level for each river basin and a single agency to maintain data bank and information system.

- The proposed amendments in the Bill will speed up the adjudication of water disputes referred to it.

- The Bill was referred to Parliamentary Standing Committee on Water Resources for examination.

- The Standing Committee has submitted its recommendation on the Bill, accordingly, the
Ministry has prepared draft Cabinet Note for Official Amendments to Inter-State River Water Disputes (Amendment) Bill, 2017.