

STATE SUCCESSION AND INTER-STATE RIVER WATER DISPUTES IN INDIA

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Introduction

The framers of the Constitution, while drafting the Constitution of India opted for a co-operative federation without confining itself to a Federal or Unitary form of Government. Though the Constitution appears to be federal in nature, the Constitution framers while taking into consideration, the varied customary, linguistic and cultural backgrounds of the populace of the polity have entrusted ample powers to the Union of India in various issues, as the final authority to resolve any issue in order to preserve the unity and integrity of the nation at all times. At the same time, in order to address the concerns of the population of each region, a number of subjects (as per the Seventh Schedule) are distributed between the Union and States. On one side, List 3 in the Seventh Schedule, *i.e.*, the Concurrent List, enables the Union and States to exercise concurrent jurisdiction, and on another side, List 1 and 2 *i.e.*, the Union and State List give exclusive jurisdiction to the Union and the States to exercise jurisdiction in their respective spheres. The Union and State Governments have been empowered on various subjects to discharge their constitutional obligations in an effective manner in order to fulfill the aspirations of the people of India as a single fraternity.

This division of powers between the Union and its units (States) is a unique experiment, which in turn earned great repute to the Constitution, making it one of best-drafted constitutions in the world. It is capable of addressing any issue at any time especially those disputes relating to distribution of powers. In view of exhaustive specific lists and the specific empowerment of the Union to resolve any issue to keep the tenacity of the federation, it is appropriate to name the Constitution as a Co-operative Federation rather than to attribute to it as a Federal, Unitary or Quasi-Federal.

The Constitution framers did their best by amply providing provisions empowering the Union of India, especially to resolve any dispute with respect to the subjects that are addressed in the Federal List (Concurrent List). In the last six decades, a number of disputes have arisen between the States and Union. In majority of the issues, the Union of India instead of addressing the concerns of people of the disputant States, either drew itself into the vortex of the dispute or enacted a 'lame duck legislation' (*e.g.*, the Inter-State Water Disputes Act, 1956) without taking sincere efforts to resolve the crisis. This is because of the political calculations of the parties in power at the Union in

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order to retain their power at any cost. This type of jettisoned behavior of the Union led to castigations across various sections of the polity on the tenacity of the Constitution itself as a co-operative federation. Among the various aspects that are distributed between the Union and the States, in view of the significant part played by water, both the Union and the States have been empowered to regulate the management of rivers especially that of inter-state. As per the provisions of the Constitution, until the Union of India makes a law, a State is empowered to legislate on water with respect to an inter-state river that falls within its territorial jurisdiction without affecting the rights of other States, subject to the legislative province of the Union of India.

Since the adoption of the Constitution, in the last six decades, the Union of India has not taken sincere steps to address the concerns of the units in the control and management of the inter-State rivers and river valleys. This has led to eruption of a number of disputes between various States. In view of the perennial inter-State water disputes that arise between the riparian States, this Paper attempts to study the issue from the point of view of International Law of State Succession in order to address the issue in a more coherent manner. It will address as to whether the Union alone has succeeded to the rights and obligations of the previous governments, and Princely States that were in existence prior to independence, or that the present States too have succeeded to the rights and obligations along with the Union of India. The paper also makes a shuttle attempt to address the treaty making power of the Union of India under the Constitution of India, which is highly essential in order to examine the aspect of sharing of inter-State river waters and valleys and the sharing of resources that are really within the jurisdiction of the Units or the Union of India. It is also important to examine as to what extent constitutional obligations casted on the Union to settle the issue to live up to the expectations of the Constitution as a co-operative federation.

State Succession and the Constitutional Perspective

State succession means the legal transfer of territory from one international person to another over a given territory along with the rights and obligations *hitherto* exercised by the Predecessor State¹. This means, in whatever the mode² that the issue of transfer of sovereignty from one State to another takes place, normally, the legal rights and obligations shall pass on to the successor. However, since the issue of State succession is linked with that of the political concept of 'Sovereignty', the practice of the States is varied in the absence of defined legal rules and regulations³. In the case of India, the issue of State Succession is slightly different compared to other State Practices. The British Government not only divided the existing State into two Dominions, namely, India and Pakistan and gave independence to the 500

1. Oppenheim, L., *International Law*, Vol 1, 9th Edn, 1992; Jennings, R., Watts, A., *State Succession In Municipal Law and International Law*, Longman, London, p 208; O'Connell, D. P., *Internal Relations*, Vol 1, 1967, Cambridge, University Press 365; Sastry, T. S. N., *International Law in Indian Context*, 2004, Dominant Publishers, New Delhi, p 2.

2. The various forms in which State Succession normally takes place are (a) cession, (b) conquest or annexation (c) fusion with other States, (d) entry into a federal union, (e) dismemberment or partition, (f) separation or secession and (g) retro-cession.

3. For the concept and practice of the States see Sastry n1, pp 1-66.

and odd Princely States who were merely theoretical sovereigns⁴. This has given rise to many complications in the contemporary era, which would not have been *hitherto* in existence. From independence to the adoption of the Constitution on January 26, 1950, all the Princely States entered into various agreements in the form of instruments of accession, merger and merged with India by transferring their rights and obligations. Based on these provisions, the Constitution in Articles 294 (1)⁵ and 295 (1)⁶ clearly states that all the properties, assets, liabilities and obligations of British India, Dominion of India and the Princely States have been succeeded by the Government of India and shall vest with the Union of India. Further an examination of Art. 296 amply make it clear that all the property, rights and obligations that vest with His Majesty or any of the former Ruler were became the property of the Union⁷.

As the Government of India conceded to the Princely States, guaranteeing that their familial status shall be protected even after independence, if they merge with India. Accordingly, in order to fulfill the promise through the Constitution Article 363 (1)⁸ clearly bars the jurisdiction of the Indian judiciary to deal with any dispute that arises out of a treaty, agreement, covenant, engagement, *sanad* or any other agreement that have been entered by the Princely States and the Government of India either prior to, or after Independence. This indirectly implies that the obligations entered into by Government of India shall devolve only on the Union as the Successor State of British India. Hence, it is implied that all the units, or *hitherto* referred to as States of the Union, cannot succeed to any obligation that arises out of all the

4. For the status and historical background of the entire issue of State Succession in the Indian Perspective see Sastry n1, pp 67-110.
5. **Succession to property, assets, rights, liabilities and obligations in certain cases.**— As from the commencement of this Constitution— (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State; and (b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.
6. **295. Succession to property, assets, rights, liabilities and obligations in other cases.**— (1) As from the commencement of this Constitution— (a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and,.....
7. **296. Property accruing by escheat or lapse or as *bona vacantia*.**— Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by *escheat* or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:
Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or of a State, vest in the Union or in that State.
Explanation.—In this article, the expressions "Ruler" and "Indian State" have the same meanings as in Article 363.
8. **363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.**—(1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument. (2) In this article — (a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and (b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

agreements especially that of political nature, as they have no independent personality like the Union of India as compared to that of a State in International Law.

Accordingly, though the subject 'water' placed in the Union and State Lists, the States have a limited role especially, with respect to the regulation and management of the inter-State water resources and river valley basins. In this regard, a critical examination of the judgment of the International Court of Justice, on the *Right of Passage over Indian Territory*⁹, amply testifies, all the rights and obligations that are conferred on the Portugal Government by the Treaty of Punnen of 1779, ought to have been devolved on India to regulate its right of passage of the Portugal over the Indian territory. Consequently, it is implied that all the rights and obligations that arose of either through property or contracts or treaties or agreements of entered into with the Princely States or any other form of Government that was in existence prior to the Indian Independence have been succeeded by the Government of India *in toto*. Hence, the disputes that have arisen in the contemporary era are only of political in nature but have no legal significance. It is for the Union to decide the cases, instead dragging the judiciary or constituting special commissions every time to settle the issues that arise out of sharing of inter-State waters.

Apart from the above position, from the point of view of International Law of State Succession, along with a cryptic examination of the provisions of the Constitution amply specifies that though water is placed in both the Union and State Lists under the 7th Schedule, the final obligation lies only on the Union of India to regulate the affairs, and not on the States. Though one may argue that Articles 294 and 295 states the obligations of each of the Province are that of the obligations of a State, as per the provisions of the Constitution with respect to implementation of treaties, it is the Union of India alone has the responsibility and not that of the States. In the language of International Law, all the agreements entered between the Princely States or British India or Dominion of India constitute only as treaties but not otherwise¹⁰.

India and Inter-State Rivers

India has nine major rivers and many tributaries. These can be classified as Himalayan¹¹ and Peninsular¹² rivers. The maintenance and use of these rivers has been distributed between various States by the Constitution. However, the ultimate responsibility is left with the Union of India and excludes the jurisdiction of judiciary.¹³ Nevertheless, the judiciary has a right to direct the Union Government to fulfill its statutory obligation as per the Inter-State River Water Disputes Act, 1954.¹⁴ Accordingly, the Union of India alone has the power to distribute the water resources between the States and

9. ICJ Reports, 1960.

10. On the aspect of Law of Treaties especially that of the treaty making power and interpretation of the treaties under the Constitution, see Agrawala, S. K., *Essays on the Law of Treaties*, 1972.

11. Ganga, Yamuna and Brahmaputra.

12. Narmada, Tapi, Godvari, Krishna, Kaveri and Mahanadi rest them are tributaries of these rivers.

13. See Art. 262 of the Constitution with respect to adjudication of disputes relating to water of inter-State rivers or river valleys.

14. T. N. Cavery Neerpasana Vilaporulagal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India, AIR 1990, SC 1316.

to address any issue with respect to sharing of inter-State waters. But the Union of India enacted the Inter-State Water Disputes Act of 1956, and provided a methodology to resolve the disputes by constituting water disputes Tribunal every time, rather than addressing the issue in a straight-jacket fashion.

Provisions of List I of the Seventh Schedule

According to Entry 56¹⁵ of the Constitution, for the regulation and development of inter-State rivers and river valleys, the Union alone has the power to regulate its aspects. Accordingly, the Parliament of India needs to enact legislation from time to time in order to take paramount consideration of public interest. A critical examination of the provision of the Constitution from the point International Law of State Succession amply testifies that the Constitution framers have through Arts. 294, 295, 296 and 363 (1) devolved the sole responsibility on the Union of India to develop or regulate the aspects relating to inter-State river waters and rivers basins than to the State Governments. An examination Provision 17 of List II (State List) amply specifies that all aspects relating to water¹⁶ are subject to the directions of the Union that the States need to follow.

A close examination of the provisions makes it reveal that the Union of India alone is empowered not only pass a legislation to do the needful in distributing the water and other matters considering the sharing of inter-State waters rather than by States or by any other commission taking into consideration of the public importance. As directed by the Supreme Court of India, *In Re Networking of Rivers*¹⁷ in 2007, it would be better for the Union of India to inter-link the rivers for the prosperity of the Country and to evolve a methodology of sharing than constituting intermittent commission to address whenever a dispute arises between various States.

Present Scenario

At present instead of enacting a legislation specifying the regulatory and sharing mechanism of inter-State river waters and river-valleys, the Parliament has enacted a legislation namely the Inter-State Water Disputes Act, 1956 and merely appoints a tribunal whenever a dispute is referred to it. By adopting such machiavellian tactics, it tries to avoid discharging its constitutional responsibility in settling the disputes.

An examination of the provisions of the Act amply testifies the above view. From a plain reading of Section 7¹⁸ read with Section 2 and other provisions of

15. 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 is declared by Parliament by law to be expedient in the public interest.
16. Water, i. e., water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.
17. [www.http://manupatra.com](http://manupatra.com)
18. 7. Prohibition of levy of seigniorage, etc. (1) No State Government shall, by reason only of the fact that any works for the conservation, regulation or utilisation of water resources of an inter-State river have been constructed within the limits of the State, impose, or authorize the imposition of, any seigniorage or additional rate or fee (by whatever name called) in respect of the use of such water by any other State of the inhabitants thereof. (2) Any dispute or difference between two or more State Governments with respect to the levy of any water rate in contravention of the prohibition contained in sub-section (1) shall be deemed to be a water dispute.

the Act, it is clear that if any State violates a scheme of distribution has been devised by the Parliament, only then disputes may be referred to a Tribunal for hearing. Until date, from the adoption of the Constitution, the Parliament of India has neither enacted any legislation nor specified any methodic scheme in regulating or distribution of water and the maintenance of inter-State rivers or river-valleys. Even though there are many instances in a number of areas, where in which Parliament and the Union is willing to encroach upon the powers of the States, but as regards this issue is concerned, the Union and the Parliament not ready to discharge their constitutional obligations for the reasons better known to them.

This inactive act of the Parliament and the Union in distribution or evolution of a scheme to distributer river water and river valleys has brought in a number of disputes¹⁹ unnecessarily between the States and has affected the smooth functioning and relationships amongst them. In fact, many a times the disputes unnecessarily become a law and order problem, thereby adversely affecting in the free exercise of the basic fundamental rights of the people of the respective disputant states.

Apart from what has been mentioned above, when Article 363(1) explicitly bars the jurisdiction of the judiciary from interpreting the provisions of the treaties, *sanads* and other agreements entered into by the Princely States and the Union of India, on what basis could a tribunal interpret the real position of a dispute and discharge its obligations.

Further an examination of a number of provisions of the Constitution, especially Article 73, Entry 14, List I, the Executive of the Union of India alone has the power to implement the treaties or any other agreements entered by another sovereign whether practical or theoretical²⁰. The real situation according to the principles of International Law of State Succession is that, all the agreements entered into between the Union and the Princely States constitute as sovereign agreements. Therefore, the Union of India alone is the competent authority to look into the provisions of the treaties, instead of leaving an important issue such as the sharing of water of inter-State rivers or river-valleys to commissions and drawing the States on to the centre stage, wherein they have practically no power.

Conclusion

The brief examination of the provisions of the Constitution in conjunction with that of the principles of International Law of State Succession clearly specifies that if the Union of India has a will; it could address the issue in an easy manner. When the issue of inter-Country water disputes were amicably settled by Nation-States employing the principles of International Law, it is

19. For the disputes between the States, see Jain, M. P., *Indian Constitutional Law*, 5th edn, 2006, Nagpur, pp 714-719.

20. Oppenheim describes all the former kingdoms as equivalent to vassals in international law and never posses any kind of personality in international law. Oppenheim, *International Law*, Vol 1 (part 1), 9th edn, Indian Reprint 2003; also see T. S. N. Sastry *Op.cit.* n 1, pp 81-87; and the extensive bibliography cited there in; also see Agrawala, S. K., *op. cit.* n x; Rama Rao T. S., Some Problems of International Law in India, *Indian Year Book of International Affairs*, Vol 6, pp 3-45; Narayana Rao. K., Parliamentary Approval of Treaties in India, *Indian Year Book of International Affairs*, Vol 9, 1960-61, pp 22-38.

not that difficult for the Union of India to enact a legislation to regulate the inter-State waters of the States. As suggested by the Supreme Court, inter-linking of waters not only promote peace and friendship between the various disputant states, but also help the State to enhance the mechanism for the better protection of environment, economy *etc.* Further, when the Union of India is clothed with the supreme power to alter the boundaries of the States under Art. 3 of the Constitution (which has been exercised on various occasions), then why can't it exercise its sole power that has been devolved upon it by the Constitution with respect to inter-State water disputes?

The dilly dallying tactics of the Union in resolving the issue directly, not only results in inter-State rivalry, but also results in escalation of natural calamities such as floods, drought *etc.* It also results in a situation in which huge quantity of water is simply flowing into the sea without being tapped. Taking into consideration of the significance of the problem, the Supreme Court of India has already suggested to the Union that there is an immediate need to take steps to interlink the inter-State river waters. This will not only fulfill the vision of the Constitution framers to create a co-operative federation, but it would also lead to economic, socio, cultural prosperity of the Nation and bring cheers to the people of various States.

Though the National Commission to Review the Working of the Constitution has not examined the provisions from this purview, but it drew a conclusion on the lines suggested by the author that Parliament alone should enact legislation in the interest of the public at large in regulating the inter-State river waters²¹.

Though it is the exclusive power of the Parliament to enact a legislation to regulate the sharing of the inter-State waters, it would be better before enacting any legislation, if the Executive initiate steps to convince the States and explain the real legal position, the binding nature of the agreements entered between the Princely States and the Union of India. Any legislation enacted by the Parliament after such an exercise to inter-link the rivers, and specifying the methodology of sharing between the riparian States, would go a long way in resolving a number of problems in future. In fact, the Union and States together should join their hands to inter-link the waters and arrive at an amicable solution. Development, regulation, and sharing of such waters between the States and the Union will certainly result in economic prosperity and it would wipe the tears of the poor farmers who are suffering either with excess water or with no water. In the long term interest of the Country as a whole, it is better that the Union steps to resolve the issues connected to sharing of waters between States would not only bring peace to the long drawn water wars between the States, but would also elevate India's image in the international arena.



21. *Report of National Commission to Review the Working of the Constitution, 2002, (Vol II) (Book -3), pp 1353-81.*