

Erstwhile water tribunals: An analysis of the decisions

Madhuri Kumari

Research Scholar, IGNOU

Abstract: Water is considered an essential resource nowadays and has been throughout history. With the advent of modern times, regularisation and management of water have become essential, especially in a world where power is now not seen in the traditional aspect of military. Here we realise the notion of power in the non-traditional form, which is seen in the context of oil and water-like natural resources. This article will analyse the erstwhile water tribunals, their decisions, and whether they contributed to the failed approach.

Key Words: Federalism, Water Tribunal, Interstate River Water Disputes Act

Various scholarly writings have been done around this specific issue. However, they have yet to go deeply into the various factors which contributed to the malfunctioning of the erstwhile water tribunal. Few writings have focused on that specific area example, Ramaswamy r. Iyer, Subhash Kashyap, who initiated the work, has grabbed the attention towards this. However, the large area remained untouched, for example, various approaches adopted by the tribunals, including the decisions this work will bring. This article consists of three sections the first section outlines the water tribunals' historical constitutional locale; the second section deals with the various decisions by the water tribunals; and the third section deals with analysing the loopholes within these decisions.

Historical positioning

Water in the pre-independent era was governed by the Government of India Act 1919 and the Government of India Act 1935. Here it can be said that due to their motive, water has to some extent to be regulated. Furthermore, in pre-independent India, water irrigation came within the provincial subject. Water was also considered a matter of local importance, reflected in Ambedkar's point of view. Later on, water was in the transferred subject. Only the Governor-General will look into the matter after the complaint by the provincial states.

With India's independence, various views on water and its constitutional locale existed. The immediate need was to keep the water as a state subject, but there was some fundamental concept revolving around it. The chief architect of the constitution was explicitly concerned about the development aspect of the country in which water was considered the utmost important tool. It was considered important from the national point of view, so the need of the time was to keep it in the centre list. However, because of the vary structure of the federal aspect, water was considered an important matter of local governance, so the middle pathway was found. Water as a subject acquires its position in the state list with subjection. Moreover, the interstate water dispute was kept to the level of the centre.

State list entry 17 [water supplies, irrigation, and canals, water shortage] subject to entry 56 [regulation and development of water] and article 262[parliament will be providing for the adjudication] deals with the provisions of the water in the Indian constitution. Under article 262, the Interstate river water dispute act 1956 was established, under which various water tribunals have been formed. A total of eight water tribunals have been formed, which we will deal with in the next section. It is essential to mention that here we are concerned only with the analysis of the decisions and focus our attention on how these decisions have contributed to the malfunctioning of the tribunals.

The later sections will focus on various vital points- review provision in the decision, amendment provision and inculcation of the parties' own decision [which correlates with the acceptance of authority], unable to reach a consensus.

Godavari water dispute tribunal

Godavari water dispute tribunal was formed in April 1969 on the request of disputant parties viz-Bombay, Hyderabad, Madras, Mysore, and Madhya Pradesh. These states form the disputant parties. Due to the various needs of the development rights after the independence, various river water projects were initiated on the river Godavari which crosses over Maharashtra, Madhya Pradesh, and Andhra Pradesh. Some of the projects' names were Ramapada Sagar dam and the Waingmaya reservoir. With the state reorganisation, a new claim was raised by the new state of Gujarat.

Various claims were added on the uses of water, which are shown below. After various negotiations, the centre had to form the tribunal under the Interstate water dispute act 1956. Tribunal had set forth the claims, which include

1. To analyse the validity of the 1951 treaty, which was concluded between the Madras, Bombay, Hyderabad, Mysore and Madhya Pradesh over water uses. However, with the new state of Gujarat, the number of riparian rights increased and formed an important issue to raise and solve.

This concern was solved when Andhra Pradesh refrained from asking that question.

The 1951 MoU, signed by the party states, mentioned there that this would be reviewed after 25 years. Before this expired, states, particularly all the disputant parties with several meeting together, agreed to solve the issue bilaterally, and this document was presented before the tribunal and finalised in 1978. It is worth noticing that here the tribunal has inculcated the party states' mutual decisions.

This specific example is presented to depict how tribunals opted to inculcate the disputant parties' agreement instead of finding their way of solution. On the other hand, this also suggests us two other reflections

1. That is how authority makes the agreement's decision binding on the claimant parties. This clearly shows the authority relationships in society.

2. Further, this shows us how close cooperation works in a smooth finding of the solution, which is hardly seen in any other water dispute and another tribunal's effort to bring the solution bilaterally.

Krishna water tribunal

Another example is the Krishna water tribunal which brings the review provision in its decisional aspects. Krishna water tribunal was established in the same year as the Godavari water tribunal on 10th April 1969. Disputant parties were Andhra Pradesh, Maharashtra, and Mysore. After forming the various issues from the state's example, if any directions of diversion of the river were to be adopted, what should be the basis? Tribunal gave its decision in 1976 and suggested various decisions. First was that uses by the states should be measured according to the percentage given or divided amongst the states. The most important decision was to 'review' the tribunal's award.

This specific review provision leaves room for doubt and invites future explanations. The re-emergence of the issue has proven to be true in the case of the Krishna water tribunal. It also questions the tribunal's implementation capacity and acts as an obstacle to implementing the award for a more extended period. Review provision brings a new approach to the decision, which can reflect the new needs of the states with time, but in the first place, it questions the longevity of the tribunals' decision.

This tribunal was reconstituted in year 2004 and called as second Krishna water tribunal. This specific case is the re-emergence of the earlier tribunal. The primary contention was over the 'establishment of the Krishna valley authority as a scheme B' in the final modified decision of the first Krishna water tribunal. Tribunal had asked the centre to publish the report, but there was no mention of that scheme, which needed to be notified. Under the Interstate water dispute act 1956, it is the centre's duty to notify and publish the final report or the decision of the tribunal. Here the quarrel emerged that since there is no mention of scheme B [establishing Krishna valley authority], this does not form part of the tribunals' decisions. Furthermore, this statement was advanced by Andhra Pradesh. Additionally, Andhra advanced the argument that whatever the decision, it was notified. However, Maharashtra contended to form the Krishna valley authority and warned Andhra not to use extra waters.

This specific example reflects the failure in 'consensus building'. There is no doubt that in the lack of a consensus-building scenario, tribunals are formed which is the case here, but beyond this dimension, the point to note here is that even after the tribunal has made the decision, there was the vagueness in the approach and consensus was not formed which ultimately question the enforcement capacity of the tribunals and effects on the successful implementation of the decision.

Narmada water dispute tribunal

This specific case has attracted many viewpoints at the domestic, international, and environmental levels. Case peculiarity stems from the fact that it served as the case study at each level mentioned above and the complexities of the issues discussed above. Since our locus and focus are on the decisional level, we will only look towards the decisional aspect here. The Narmada water tribunal was established on 6th October 1969.

The problem warrants our attention when after analysing the Narmada sites, various projects were decided to be built to reap the benefit from the Narmada River. Therefore, the Navagam dam was to be built surrounding that area. Madhya Pradesh, one of the significant disputant parties along with Maharashtra and Gujarat, had primary contention about the increasing height of the Navagam dam built by Gujarat to reap more benefits to the region and more sharing from the project built on its territory, which resulted in the constitution of the tribunal.

Tribunal, in its award, directed Maharashtra and Madhya Pradesh [one of the decisions] to compensate Gujarat if their action [building a power project] causes hurt to Gujarat. Furthermore, was the ratio incurred upon the states regarding the utilising the benefits [Madhya Pradesh 18.25 M.A.F, Gujarat 9 M.A.F, Maharashtra 0.25 M.A.F, Rajasthan 0.5 M.A.F]. Tribunal suggests in its award that whatever decisions were given in the clauses are also subject to review in the near future.

Here tribunals analysed above have mentioned that there should be a 'review' of the mentioned clauses in their decisions. What is inherently vague in these various specific provisions of review is [beyond the possibility of the re-emergence of the issues] that it does not suggest at what time or which time should be suitable to review all these provisions, which creates confusion and the ineffectiveness of the decision.

Cauvery water dispute tribunal

This has been one of the most prolonged disputes along with the Krishna water dispute tribunal. Despite its political nature, which took the issue and held it for a more extended period, this case depicts the example of one of the core concerns in this article, that is, the 'provision of doing the amendments in the said tribunal's decision award'.

The Cauvery water dispute tribunal was established on 2nd June 1990. An issue arose between Mysore and Tamil Nadu based on the breach of the 1929 agreement by Karnataka between the parties. According to the agreement, two projects were to be built by both states. In the case of Mysore [Karnataka], it was Krishnarajasagar dam, and Madras [Tamil Nadu] was a Metter dam. While developing the project, Mysore irrigated beyond the prescribed limit, which was considered a violation of that agreement.

Tribunals' one of the decisions included upholding the 1924 agreement. Furthermore, it gave more shares to Tamil Nadu, which was 419 t.m.c and later, in 2018 Supreme Court reduced the share of Tamil Nadu to 14 t.m.c. Apart from the court order, the tribunal's original award mentions the amendment provision in the tribunal's decision which is a bone of contention between the parties.

Vansadhara water tribunal

This tribunal was established at the request of Odisha by the central government on 17th September 2012. A complaint was from the Andhra Pradesh government to managing the flood control on the side of Odisha's construction of the barrage. Tribunal gave its decision on 13th September 2017. One of the tribunal's decisions was to construct the side weir. These were important to protect the area from each other and establish the committee members who would keep an eye on the project and supervise. In its decision, the tribunal also included the amendment provision through mutual understanding, which has given room for doubt.

The above section has gone into the analysis of the decisions of the erstwhile water tribunals, which leads to thinking that there were internal loopholes in the water tribunals' decisional aspect concerning a few key points pointed out above. These are review

provision, amendment provision, and inculcation of the disputant parties' decisions. This scenario leads us to the specific points that question the legitimacy and authority of the water tribunals. It also affects its overall work leading to effects on various developmental aspects of the state concerned.

Conclusion

Due to these scenarios, we have witnessed the Interstate River Water Dispute amendment act 2019. The tardy and malady function of the water tribunals required changes; however, in the paper, we have only focused on the decisional aspect of the tribunal. It clearly suggests the malfunctioning and how certain decisions become a barrier to resolving the issue and stalemate between the various states.

This brings us to the place where we have seen that in a federal country, it was considered essential to keep the local issues within the jurisdiction of the state. However, when natural resources like water cross the state's borders, it becomes interstate in nature. It hence becomes a matter of national importance for which there is a provision of establishing a water tribunal under the interstate water tribunal dispute act 1956. Nevertheless, due to various circumstances - social practices, legal practices, political factors and malfunctioning at the institutional level- the decisional aspect of the water tribunals creates anxiety and obstructs the situation.

Review, amendment in the own decisions of the tribunals, inculcation of the disputant parties' suggestions, and inability to reach consensus even after addressing the queries and issues of the disputant states were shown above from the various examples of the few water tribunals decisions. It reflects that the water tribunals approach has been proven a failed effort at the decisional level. The all-over approach needs to be more satisfactory. The anomalies are found in the decisions themselves, which resulted in the malady situation. The alternative approach has been found in the new water tribunal through the interstate river water dispute amendment act 2019, which is out of the scope of this work. It will be interesting to see how the new water tribunal has corrected past mistakes. India is in the development phase, and water is considered an important source through which one can reap the benefits of development. This has ignited the urge to make the maximum use of the water.

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