

Consensus, Federalism and Inter-State Water Disputes in India

Authors : Amrisha Pandey

Abstract : Indian constitution has distributed the powers to govern and legislate between the centre and the state governments based on the list of subject-matter provided in the seventh schedule. By that schedule, the states are authorized to regulate the water resource within their territory. However, the centre/union government is authorized to regulate the inter-state water disputes. The powers entrusted to the union government mainly deals with the sharing of river water which flows through the territory of two or more states. For that purpose, a provision enumerated in Article 262 of the Constitution of India which empowers the parliament to resolve any such inter-state river water dispute. Therefore, the parliament has enacted the - 'Inter-State River Water Dispute Tribunal, Act', which allows the central/union government to constitute the tribunal for the adjudication of the disputes and expressly bars the jurisdiction of the judiciary in the concerned matter. This arrangement was intended to resolve the dispute using political or diplomatic means, without deliberately interfering with the sovereign power of the states to govern the water resource. The situation in present context is complicated and sensitive. Due to the change in climatic conditions; increasing demand for the limited resource; and the advanced understanding of the freshwater cycle, which is missing from the existing legal regime. The obsolete legal and political tools, the existing legislative mechanism and the institutional units do not seem to accommodate the rising challenge to regulate the resource. Therefore, resulting in the rise of the politicization of the inter-state water disputes. Against this background, this paper will investigate the inter-state river water dispute in India and will critically analyze the ability of the existing constitutional, and institutional units involved in the task. Moreover, the competence of the tribunal as the adjudicating body in present context will be analyzed using the long ongoing inter-state water dispute in India - The Cauvery Water Dispute, as the case study. To conduct the task undertaken in this paper the doctrinal methodology of the research is adopted. The disputes will also be investigated through the lens of sovereignty, which is accorded to the states using the theory of 'separation of power' and the 'grant of internal sovereignty', to its federal units of governance. The issue of sovereignty in this paper is discussed in two ways: 1) as the responsibility of the state - to govern the resource; and 2) as the obligation of the state - to govern the resource, arising from the sovereign power of the state. Furthermore, the duality of the sovereign power coexists in this analysis; the overall sovereign authority of the nation-state, and the internal sovereignty of the states as its federal units of governance. As a result, this investigation will propose institutional, legislative and judicial reforms. Additionally, it will suggest certain amendments to the existing constitutional provisions in order to avoid the contradictions in their scope and meaning in the light of the advanced hydrological understanding.

Keywords : constitution of India, federalism, inter-state river water dispute tribunal of India, sovereignty

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