

## **Centre State Relations in India**

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**Week 02: Administrative Relations: Distribution of the Subjects; Obligation of the Centre and the States**

**Lecture 09: Inter-State Disputes Relating to Water**

Greetings to all the learners. So, we are discussing module 2, where we are discussing on administrative relations particularly we are focusing on that how on the several facets of administrative relation, there has been a kind of Centre State negotiation going on, Centre State relationship is getting governed and in today's lecture, we will be taking up a very important issue which really affects the federal relationship between the Centre and the State is the issue of inter-State water. So, these are the areas which we will cover, we will introduce inter-State river disputes, what this Constitution talks about the dispute and then we will also look into how the Constituent Assembly has looked into the issue of inter-State river water disputes and what are the initiatives which Parliament has taken on the matter of resolving water disputes and whether judiciary's intervention is there for resolving the dispute in a right way or how judiciary has intervened on the matter of inter-State water dispute that also we will discuss. Because we know very well that prima facie there is a constitutional embargo on the judiciary to interfere on the matter of inter-State water dispute. However, we know very well that every decision of the tribunal lands up before the judiciary for either for interpretation or for effective implementation of the order of the tribunal. So, we will be discussing the same.

Now, when you look at the inter-State river water dispute, it becomes a very important issue because we know very well that water is an important you know resource. It is an important resource for both agricultural economy as well as for industrial economy and

that is why it becomes very critical and contentious subject when river flows from one State to another State that how the water in that river shall be shared and that is why this issue becomes very significant particularly between the two States. This is something which we need to understand that on the matter of inter-State river water dispute ordinarily what we find is that two constituent units or more than two constituent units they come into conflicting situation. It is not on a very you know traditional line of the Centre and States coming in conflict or confronting with each other on an issue. It is interestingly the contentious issue is between constituent units which could be either between two States or between more than two States.

This becomes very important because of geographical complexities particularly let us say for example, there is a State which is an upstream State and there is a State which is a downstream State. So, source of river is in one State and other States are eligible to get the benefit, eligible to get the share of the water and how overall there shall be a distribution of water and particularly the things are becoming more challenging, the subject matter is becoming more challenging these days because of climate change, because of various issues which are coming in for example, drought like situations for example, State getting into faster mode on economic development and requires more resources or the change in the agricultural pattern. So, all these issues are making inter-State water river dispute a very challenging one and it certainly makes a very visible impact on the federal relation in this in this country. So, makers they have adopted the model which was there in the Government of India Act 1956 because they were aware of the fact that inter-State water dispute is one such area which will continue to have an impact on Centre State relation and therefore, they have very appropriately decided to continue with the provisions in the Constitution. So, that the guidance shall be there from the Constitution itself and we need not look at other materials, other resources for resolving the dispute.

It seems that the role has been given to the Union government in order to resolve the dispute that is how the division of the subject matter between the Centre and the State. Water as a subject is there with the State whereas; Centre has got a subject matter on regulation and development of inter-State rivers and river valleys. So, when you look at

the Constitution, Part XI deals with adjudication of disputes relating to water of inter-State rivers or river valleys discussed under Article 262 of the Constitution. The language of Article 262(1) empowers the Parliament to provide for an adjudication of any dispute with respect to use, distribution or control of waters of any inter-State river or river valley. So, primarily the responsibility has been given upon the Parliament to come up with a kind of mechanism so that the dispute between the States over water can be resolved. At the same time considering the geopolitical context of the subject matter Article 262(2) categorically says that Parliament may by law exclude the adjudication of the Supreme Court or any other court in respect of any dispute under Article 262(1).

So, this is one provision wherein the Constitution mandates that the reviewing power of the court can be completely excluded. The adjudication of the Supreme Court can be excluded and it appears to be a very obvious provision this kind of exclusion is very obvious. It is a very natural because the nature of dispute is such where one can possibly see a better resolution through negotiation, better resolution of the dispute through a kind of agreement instead of seeing it as a pure legal dispute where things are to be decided as per the legal principles and that is why very futuristic provision where it has been provided that if the Parliament deems fit then the adjudication of the Supreme Court can be excluded.

Now, when you look at the division of the subject matter in the Schedule VII as I said that regulation and development of inter-State rivers and river valley this subject matter has been interested upon the Centre whereas, water, water supplies, irrigation which has been given to the State under Entry 17 of the List II. Now, as far as use of water is concerned and that is to be understood as surface water, State has got a kind of exclusive authority, but when it comes to inter-State river then Union steps in. Now, here there could be a possibility where the use of surface water may result into damaging the resources of water of other States.

In such a situation Union can interfere. So, the very subject matter of water and inter-State water there is a need to build a very well-crafted balance fulfilling the interest of the competing States. That is why what is desirable is that, State must use surface water in a

reasonable way and not to extract water or water resources in unreasonable way so that it should have a kind of adverse effect on the resources for other States. And at the same time if something like that happens then the responsibility is shifted to the Center to make the intervention in order to ensure that this common resource is being utilized in such a manner so that it gives benefit to everyone and beneficial for everyone. Now, in Constituent Assembly Debates the discussion on inter-State water river dispute where we find that in Draft Article 242A which was discussed on 9 September 1949.

The discussion took place on what shall be the structuring and it appears that the framers of the Constitution they were heavily occupied with the issues of national integrity after partition took place and that somehow became the more pressing need for the makers of the Constitution to discuss and deliberate and finalize. On the important subjects like inter-State river they decided to continue with the framework given under the Government of India Act 1935. And that is why what we find is that that initially when the draft Constitution are made in 1948 there was no provision on inter-State water dispute. What was done is that later on when first draft was presented then it was thought that this is one issue which shall also be there in the Constitution and on a similar line as it was there under 1935 Act. The provisions were included in the 1950 Act also. Now, the draft provision provided for the very power upon the President to appoint a Commission who shall deal with the disputes on interstate rivers after receiving a Complaint from the State and one of the members Mr. Brajeshwar Prasad urged that such power should be vested with the President and not with the Parliament. However the debate does not reflect on what exactly happened with the proposal of Sri Brajeshwar Prasad. So the Draft Article 242A was adopted as Article 262 and the similar provisions were added where under Government of India Act 1935 the power was given to the Governor-General, here the power was given to the Parliament where Parliament can make a law on the issue of resolving a dispute on inter-State water dispute. So Parliament has taken important initiatives, Parliament has enacted the law within the first decade of gaining independence. So parliament has enacted River Boards Act 1956 by reading power under Article 246 read with Entry 56 of List I and the River Board Act was given necessary power to look into the issues which may bring in dispute between the States

Along with that Parliament also enacted Inter-State Water Disputes Act of 1956. Brahmaputra Board Act was enacted in 1980, Damodar Valley Corporation was enacted in 1948, Betwa River Board was enacted in 1976 and Bansagar Control Board was enacted in 1976. Now when you look at this Brahmaputra Board Act, Damodar Valley Corporation, Betwa River and Bansagar you find that these Acts were enacted for a very specific purpose dealing with the issues on Brahmaputra River or Betwa River or Bansagar control. Damodar Valley Corporation stands distinctively because it is one Act which was enacted for the purpose of fulfilling also the industrial requirement of the region through which Damodar flows and that is how this entity came into existence which is popularly known as DVC. So this Corporation has come into existence to use the water of Damodar River and use for the industrial purposes as well as for the irrigation purposes. So that is what you see the Act.

The other two acts River Boards Act and Inter-State Water Disputes Act are of a general nature which I will be discussing in detail in later slides. There are two non-statutory bodies are also established to promote river water development, one is National Water Development Agency and the other is Water Resources Development Council. Now coming to River Boards Act 1956, the Act was enacted with great hope and aspiration. It was enacted with an idea that Parliament shall establish River Board for the purpose of regulation and development of inter-State river and the idea was that that this Board shall come up with kind of preventive measures so that the situation of conflict should not arise between the State and they can give a developmental model which can be adopted by the States through which river is flowing. That is why under the Act the River Boards were given advisory power and not conferred with any adjudicatory power and that is possibly that is the reason that River Boards Act failed to fulfill the aspirations and it became dead letter that is what National Commission to Review the Working of the Constitution observed that this Act has remained a dead letter because it has never been given effect and the Review Committee has suggested that let there be a kind of amendment done in this Act so that this Act becomes full of authority and it can also look into the issues of resolution of the dispute.

Apart from that the responsibility should not be limited only to advise, it can be also for

ensuring the steps are taken by the concerned States for fulfilling the advice given by the Board. So, Commission has suggested this that let there be a new enactment which should clearly define that what shall be the constitution of the Board, their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and recognized rights of the States through which the river passes. So this is suggested because River Boards Act has been enacted with a very good intent that this Act will facilitate engagement with the States, ensure that the States come on the dialogue table and discuss their issues and try to resolve their issues through discussion and dialogue instead of getting into a kind of conflict situation. Unfortunately this Act never came into force.

There is another Act which was enacted in the year 1996. This is Inter-State River Water Dispute Act primarily enacted for resolving the dispute relating to water of inter-State river. So under this Act there was an attempt made that let there be a tribunal and let the tribunal look into the different issues on which water sharing is to be decided and give a final order which shall be binding upon the parties. So there you can very well find a distinction between the River Boards Act and Inter-State River Water Dispute Act. Under River Boards Act it was more of an advisory body, here the tribunal has been given a very clear authority to adjudicate. However, what has been provided under the 1996 Act was that when a dispute arises then a State government has to make a request to the Central government to refer it to the tribunal. So you can very well visualize that what was envisaged under this 1996 Act was not like ordinary dispute resolution body where there is a tribunal and one the complainant can approach the tribunal and the tribunal seizes the matter and initiates the proceeding.

In this case the complaint has to go to the Central government. It is the Central government which shall refer the matter to the tribunal and possibly this is also one of the reasons why we find the Disputes Act is also not effectively fulfilling the obligation interested upon by the Act. So Central government establishes the tribunal under Section 4 when it believes that the dispute cannot be settled by negotiation. So this is something which is very significant to note that Interstate River Water Disputes Act of 1996 provides for negotiation. It makes negotiation as one of the statutorily recognized process

of settling the dispute between the conflicting States. But then there is a drawback, the drawback here is that if negotiation fails then directly this Act talks about the adjudication.

Possibly the Act should have talked about other forms of alternate dispute resolution and then only ultimately it should have suggested for referring the matter for adjudication. So from negotiation it refers the matter for adjudication and generally it has been experienced and witnessed that negotiation fails because of politicization of the issue, the lack of political will and then the matter is referred for adjudication before the tribunal. The Act, on the lines of Article 262 of the Constitution, bar the jurisdiction of the Supreme Court or any other court. So tribunal's order is supposed to be a final order. So these many tribunals are being set up, you find Godavari Water Disputes Tribunal is set up wherein Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh and Odisha are parties. Krishna Water Disputes Tribunal, Maharashtra, Andhra Pradesh, Karnataka are the parties. Krishna Water Disputes Tribunal II again Karnataka, Andhra Pradesh and Maharashtra are parties. Narmada Water Disputes Tribunal, Rajasthan, Madhya Pradesh, Gujarat and Maharashtra are parties. Ravi and Beas Water Tribunal, Punjab, Haryana and Rajasthan are parties. Cauvery Water Disputes Tribunal Kerala, Karnataka, Tamil Nadu and Puducherry these States are parties. Then Vansadhara Water Disputes Tribunal Andhra Pradesh and Odisha these States are parties and Mahadayi Water Disputes Tribunal Goa, Karnataka and Maharashtra these three States are parties to the disputes.

Now when you look at the changes which are being made or proposed on the matter of inter-State river, River Basin Management Bill was one change which was suggested and then we have Dam Safety Act which was already passed by the Parliament in 2019 and Inter-State River Water Dispute Amendment Bill is also proposed. Now I will discuss the Dam Safety Act. Dam Safety Act where in the name of dam safety it appears that the Centre has attempted to take over the issues of water and it is suggested that the Centre shall come up with the broader framework on safety measures of dam.

So one may argue or one way look at this Dam Safety Act as an attempt where Centre is intervening on the matters which technically or practically even States can take care

possibly by the means that Centre can provide for a standard safety measures and leave it for the States to implement the same. But in this case it appears that under this law, Centre has undertaken this responsibility unto itself. Now River Basin Management Bill is also there where the development of river basin is entrusted with the Central government that is the proposal under 2019. River basin as we know is understood as an area which is drained by river. So the development of that, regulation of that is under this proposed Bill is interested upon the Central government where there has to be also the involvement of the Chief Ministers of the States, riparian States they can also become part of this Management Bill and accordingly the management of river basin has to be taken.

Now suggestion has been also made or proposal has been made to amend inter-State river water disputes wherein it has been suggested that let there be a time frame given for resolving the dispute which is referred to the tribunal by the Central government. It has been also suggested that let there be a separate body called Dispute Resolution Committee which shall be given the responsibility to negotiate on the matter of dispute and this Committee shall be given duration of 18 month time. So that during this 18 month time this Committee can suggest the ways to resolve the dispute and this Committee shall be constituted by the Central government and it has been proposed that it is mandatory that this Resolution Committee should take up the matter before the matter is referred to the tribunal. There is a time period also given for the tribunal that tribunal can take four and a half years because this is one of the drawbacks of the existing law of 1956 that there is no time frame given. So generally what happened that these tribunals they take unduly unreasonable duration to solve the problem, to solve the dispute. So, the statistics says that there are disputes, water disputes which have taken as good as 33 years' time to resolve the dispute or 25 years to resolve the dispute. One reason which is ascribed for which is you know set for such delays are that these tribunals do not really function as ordinary tribunal, their seating's are not very regular.

So because of that they keep on seeking extensions after extensions and therefore it takes unreasonable time to resolve the dispute. And that is why another good suggestion which was given in the proposed Bill is that instead of having multiple tribunals for solving the



issue of different rivers what is suggested is that let there be a single tribunal and different benches of that single tribunal so that matter can be referred to the tribunal and then it can be further delegated to the benches, that is what has been suggested. This is what I was talking about River Basin Management Bill which proposes to establish River Basin Authority for development, regulation and management of inter-state river basins. We know very well that development and management of inter-State river basin is very important for the purpose of environment and therefore a two-tier body was suggested Governing Council and Executive Council where the power has been given to the Central government to demand the limits of the inter-State river basins. As of now it seems that there are 25 river basins in this country.

So what it proposes is to work on the principles of cooperation, participation, equitable and sustainable management, conjunctive management, integrated management, demand management and water as a common pool of community. So this is the working principle which the Bill proposes to develop, to regulate and manage inter-state river basins. As I said that judiciary has been kept away from the issue of inter-State water dispute, but at the same time good number of cases have come up to the Supreme Court and generally these cases have landed up before the Supreme Court on the very premise of either seeking an effective implementation of the tribunal order or for challenging some of the procedural issues with regard to the functioning of the tribunal and that is something which can very well be taken up by the judiciary as a part of judicial review. So otherwise when it says that Supreme Court is barred, what does it mean is that Supreme Court is barred from examining the issue on merit and Supreme Court should refrain from getting into that merit question. So there are in fact no instances but except one where Supreme Court has gone into merit and decided something different from what was decided by the tribunal that was happened with regard to Cauvery dispute.

So this 1992 case where the matter was referred to the Supreme Court through the Presidential reference under Article 143 where the court has laid down a broader guideline and court has said that water of an inter-State river passing through corridors of the riparian States constitute a national asset and no single State can claim exclusive ownership of its water. This is a very interesting one where what we find is that there was

the source of river is Karnataka which is upstream and downstream the beneficiary State is the Tamil Nadu, Kerala and Puducherry. There was an agreement which was executed between these States particularly Karnataka and Tamil Nadu during the colonial time and that agreement was there for 50 years. So, there was a question raised that should that agreement be a valid one or there is a need of renegotiating it because the conflict was largely on agricultural demand on agricultural demand of the State of Tamil Nadu and industrial demand or economic requirement of the State of Karnataka. On that tribunal was constituted and the tribunal has been giving award on this matter of sharing of water. So that is what again in 2016 the court has said that the court had the jurisdiction to hear appeals filed by Karnataka, Tamil Nadu and Kerala against the award given by the Cauvery Water Dispute Tribunal. So court in this case assumes the jurisdiction on the basis of the functioning of the tribunal, ensuring that the award of the tribunal is implemented. We know very well that Apex Court, the Supreme Court has the authority and also enjoys the respect. So anything which is coming from the Supreme Court will have a higher bindingness and greater respect and that is why the involvement of the Supreme Court on this matter is also perceived in that manner.

Again in 2018 State of Karnataka has gone to the Supreme Court challenging the order of the tribunal where the court has acknowledged the principle which is applicable which is applicable on the matter of water dispute internationally, i.e., principle of equitable apportionment which is acknowledged under Helsinki Rules, Compiegne Rules and Berlin Rules. Under these rule it has been stated that the State shall have a fair share on common rivers that is the bottom line of these principle. These rules are also accepted in India under National Water Policies. The court has said that this principle will be a guiding factor or can be a guiding factor for resolving disputes in India when it comes to distributing the water between the States. Then we have got an intervention by the Supreme Court on the matter of Sutlej-Yamuna Link Canal where again the court has admitted the suit against the Punjab government non-compliance of terms through which Sutlej-Yamuna Link Canal distribution of water was finalized. So, the court in this case has indicated that this kind of dispute becomes dispute under Article 131 and it can be taken up. Another matter very interesting one which again has gone on the Supreme

Court through advisory opinion under Article 143 where Punjab government has unilaterally terminated the agreement which entered into on the issue of Sutlej-Yamuna Link Canal. The court has said that one State does not have any authority does not have any power to terminate the agreement on water sharing between Haryana and court has said that this is unconstitutional.

Supreme Court has also seized the appeal against the Krishna Water Disputes Tribunal between State of Andhra Pradesh and State of Karnataka. Supreme Court is also hearing the appeal against the decision of the Vansadhara Water Disputes Tribunal to allow Andhra Pradesh to construct a Neradi Barrage on river Vansadhara which is again a dispute between Odisha and Andhra Pradesh. So, what we find is that that even though there is a provision in the Constitution which bars the jurisdiction of the Supreme Court, occasions are there, situations are arising where the Supreme Court is making an intervention and possibly this is happening because the tribunals are not given enough power to ensure the implementation of the order what they are passing. And very appropriately I believe that Supreme Court has been kept away from this subject matter because this subject matter need not be seen only from a perspective of law and legal dispute where legal principles will play an important role in resolving the dispute. It relates to multiple factors and therefore which can be successfully resolved by negotiating, by entering into a kind of dialogue with the competing parties so that whatever is resolved through that negotiation will have a longer acceptability and which will not unnecessarily lead to a kind of mistrust between two constituent units. So, these are the references for this unit. Thank you very much.