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STATE SUCCESSION AND INTER-STATE RIVER WATER DISPUTES IN INDIA

Prof. Dr. T. S. N. Sastry

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 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 order to retain their power. This has led to castigation of the Constitution aspects that are distributed between States. As per the provisions of law, a State is empowered to regulate a river that falls within its territory, and if disputes arise between States, the Supreme Court has the ultimate authority to resolve such disputes.

Since the adoption of the Constitution, the Union Government has not taken control and management in perpetuity of the inter-State river water disputes. This Paper attempts to look at the Law of State Succession to a perennial inter-State river water dispute. This Paper also makes a case for Union of India to take over and the sharing of inter-State river water dispute and the sharing of the expectations of the States, in the interest of the residents of both States.

State Succession

State succession is an important aspect of public international law and obligations. In international law, whatever the mode and manner of succession to the successor, that of the political entity in the absence of any issue of State Succession. The British Dominions, namely,

3. For more concept and practice.
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 hither to exercised by the Predecessor State. This means, in whatever the mode 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 regulations. 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

*Citations*

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) disembarkation or partition, (f) separation or succession and (g) retrocession.
3. For the concept and practice of the States see Sastri ch. 1-68.
and odd Princely States who were merely theoretical sovereigns. 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) and 295 (1) 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 vested with His Majesty or any of the former Ruler were become the property of the Union.

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) 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 to referred to as States of the Union, cannot succeed to any obligation that arises out of all the

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4. For the status and historical background of the entire issue of State Succession in the Indian perspective see Bashi, A., pp. 67-118.

5. Succession to property, assets, rights, liabilities and obligations in certain cases - As from the commencement of this Constitution, 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, wheresoever 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 Federation of Pakistan or of the Province of West Bengal, East Bengal, West Punjab and East Punjab.

6. 293. Succession to property, assets, rights, liabilities and obligations in other cases - (1) As from the commencement of this Constitution, all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State appointed 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 matter 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 escheats or lapses, or as bona vacantia for want of a rightful owner, shall, if it is property situated 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, 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 situated in a State, vest in such State, and shall, in any other case, vest in the Union.

8. 136. 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 which the Government of the Dominion of India or any 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 to any liability or obligation arising out or any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

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9. (i) "Indian State" means any territory recognized 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.

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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, amply testifies, all the rights and obligations that are conferred on the Portuguese Government by the Treaty of Pynen 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 otherwise ‘9.

India and Inter-State Rivers

India has nine major rivers and many tributaries. These can be classified as Himalayan10 and Peninsular11 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.12 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, 1954.13 Accordingly, the Union of India alone has the power to distribute the water resources between the States and

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11. Gang, Yarnua and Brahmaputra.
12. Namata, Tapi, Godavari, Krishna, Kaveri and Mahanadi are some of these rivers.
13. See Art. 282 of the Constitution with respect to adjudication of disputes relating to water of inter-State rivers or river reliefs.
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 a 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 56\(^{15}\) 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 rivera basins than to the State Governments. An examination Provision 17 of List II (State List) amply specifies that all aspects relating to water\(^{16}\) 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 7\(^{18}\) read with Section 2 and other provisions of the Act, it is clear that devised by the Parliament for hearing. Until date of India has neither scheme in regulating State rivers or river-valleys than to the State Governments. An examination Provision 17 of List II (State List) amply specifies that all aspects relating to water\(^{15}\) are subject to the directions of the Union that the States need to follow.

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**Conclusion**

The brief examination with that of the provisions specifies that if theeasy manner. Where settled by Nation-
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 disputes 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 theoretical19. 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 issues 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...
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 waters.

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.

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Introduction

While displaying philosopher and philosopher said that a man arthangini, i.e., suffers from discrimination in fortitude and inequality and is safer to be on one's family, for one's family occur.

Domestic or family the amelioration of serious deterrent to the international community to protect women in the family. Before I addressed the problem under the law for cruelty by human justice to an age

* Advocate.
* Madhu Karor v. State of Sikkim
* Brandon, Sydney, Violence
* The United Nations Committee on the Elimination of Discrimination against Women, 1975 and women's rights. Theafter, maje, advocate
* See infra note 9.