

INTERSTATE RIVER WATER DISPUTES ACT - 1956 AND ITS LEGAL PROVISIONS

N. Sasidhar

Synopsis: This paper elaborates the techno – legal aspects of Interstate river water disputes act – 1956 which was enacted to resolve the water disputes among the basin states of an interstate river / river valley. This Act’s main purpose is to protect the interests of a downstream state when water resources available in an upstream state are put to additional use.

Interstate River Water Disputes Act – 1956 (IRWD Act) was first enacted on 28th August, 1956 by Indian parliament on the eve of reorganization of states on linguistic basis to resolve the water disputes that would arise in the use, control and distribution of an interstate river or river valley. This Act further has undergone amendments subsequently and its recent amendment took place in 2002. It also validates the previous agreements (if any) among the basin states to harness water of an interstate river/ river valley.

Sections 2c & 3 of IRWD Act are reproduced below to analyze its scope of ambit in defining a water dispute.

“Section 2c of IRWD Act: ‘Water dispute’ means any dispute or difference between two or more State Governments with respect to

1) the use, distribution or control of the waters of / in any interstate river or river valley

OR

2) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement

OR

3) the levy of any water rate in contravention of the prohibition contained in section 7 of this Act

Section 3 of IRWD Act: If it appears to the Government of any state that a water dispute with the Government of another state has arisen or is likely to arise by

reason of the fact that the interests of the State, or any of the inhabitants thereof, in the waters of an inter-state river, or river valley have been or are likely to be, affected prejudicially by

- a) *any executive action or legislation taken or passed, or proposed to be taken or passed, by the other state;*

OR

- b) *the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters;*

OR

- c) *the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters, the state Government may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication.”*

Water disputes: IRWD Act is applicable only to interstate rivers / river valleys. An action of one state should affect the interests of one or more other states. Then only water dispute has arisen under IRWD Act. It can be divided in to two independent parts for clarity purpose in understanding the legal application of IRWD Act

- 1) *Actions of a downstream state affecting the interest of upstream state:*

A downstream state’s action can affect the upstream state interest only in one case. I.e. when a downstream state is building a dam / barrage near its state boundary and submerging the territory of an upstream state on permanent / temporary basis. Other than this action, no other action of a downstream state could affect the upstream states interest which they have been using for economical, ecological and spiritual/ religious aspects. The meaning of the word ‘*interest*’ in this context is *concern / importance / significance / relevance / consequence* of losing the prevailing water use / purpose.

- 2) *Actions of an upstream state affecting the interest of downstream state:*

Whereas all the actions of an upstream state to use or control or distribute the water of an interstate river can affect the downstream states in one way or other. The following are some examples but not complete:

- Consuming river water for any beneficial use such as irrigation, drinking water, industrial, recreation, recharging of ground water, ground water use, enhanced evaporation losses, enhancing rain water use efficiency, obstructing non flood flows of the river, transferring water to outside the river basin, etc (i.e. any manmade /aided action of converting water in to water vapor & losing to atmosphere by evapo-transpiration and evaporation processes. Also transferring river water outside the river basin). This is generally done by constructing water storage reservoirs and subsequently using water for above purposes.
- Quality of water can also be diminished / altered/ controlled in the action of using water. It would take place by accumulating the dissolved salts in the remaining water after its use. The dissolved salts content of water increases due to its consumption and also addition of more salts by anthropogenic activity. Also causing water more silt laden / turbid is a manmade water quality alteration which can be caused by mining and deforestation activities. Bringing water from other river basins for upstream states use also effects water quality in downstream states.

Generally river water is transferred to water deficit areas for use after creating the infrastructure for its storage (water reservoirs) and distribution network (canals, pipelines, ground water charging, etc). All these acts fall under river water distribution and control category under IRWD Act.

All the above actions of an upstream state are legal causes of water dispute to the downstream states since their existing interests are affected as given below:

- *Decrease in water availability:* When an upstream state contemplates water use, it would block the lean season river flows initially by constructing low cost barrages and tries to store the peak flood waters ultimately by constructing massive water storage reservoirs. In this process the river flow regime is altered drastically converting it ephemeral / dry in most of the time except during floods. It also alters the

ecology of the river located in downstream states affecting its riverine vegetation and aquatic flora & fauna. Already the delta area of rivers are eroding / shrinking when adequate river water is not reaching sea.

This process of river water harnessing effects the downstream states interests as they are deprived of constantly available river water which they had been using for their interests. Alternatively, downstream state needs to store more flood water in reservoirs to cater to the existing water use.

- *Deterioration in water quality:* If the water use exceeds 65% of the total available water in the river, the dissolved salts in the river water increases by three folds. Alteration in river water quality effects growth of traditionally cultivated crops as they are not best suitable with the enhanced salinity of the river water. They either give lesser yield or consume more saline water for the same yield. Also the aquatic flora & fauna would face survival threat / diminished growth with the enhanced water salinity. If the river is blocked to reach the Sea (i.e. basin closure) in most of the years, the ecology / fisheries of the surrounding Sea / river mouth area is also affected. Also there is threat of Sea water ingress in to estuaries / delta of the river contaminating ground water. The use or control or distribution of river water in an upstream state is invariably denial of prevailing use / purpose in the downstream state as it is altering natural flow regime of river water with respect to quantity, quality and time of availability in downstream states. IRWD Act clearly stipulates that mere anticipation of upstream state actions which can affect downstream state interests is enough to raise interstate water dispute.

The activities of an upstream state without effecting downstream states interests are peak flood control measures by impounding the flood waters only (not base flows) in 100% or more capacity storage reservoirs for use and run off hydro power generation taken up in its territory.

In 2002, the IRWD Act was amended by adding following to Section 4(1)

Provided that any dispute settled by a Tribunal before the commencement of interstate water disputes (amendment) Act, 2002 shall not be re-opened.

This amendment specifically barred altering the prevailing tribunal verdicts issued before the year 2002 only but not the prevailing agreements taken place before the year 2002. This amendment empowers the new tribunal to revise the earlier agreements among the states and the tribunal verdicts issued after the date of this amendment.

Analysis: It is very clear that the intent of IRWD Act is mainly to protect existing water use / purpose served in downstream states from the activities of upstream state's additional water use, control and distribution of an interstate river / river valley. I.e. any activity by upstream states is subject to consent from downstream states in the form of interstate agreements and vice versa is not legally required except in land submergence case as explained earlier. If the states are not able to reach amicable agreements on their own, section 4 of IRWD Act further provides dispute resolution process in the form of Tribunal. The tribunals should also give verdicts within the ambit of IRWD Act. The role of the tribunal is to explain to the upstream basin states about the deprivation of downstream states (ecological & economical) in agreeing with demands / plans of upstream states and to what extent upstream states are prepared to make good of the loss to be suffered by the downstream states. This can be achieved by taking the services of neutral Indian / Foreign technical experts in the relevant fields. Ultimately Tribunals should persuade the upstream states to enter in to agreements with downstream states of an interstate river / river valley by offering comforts in the form of regulated water flow, flood control, hydropower in exchange for additional water use rights in their territories. Often the situation is in reverse way by appeasing the sentimental claims of upstream states that water available in one state belongs to it fully for use. Tribunals should avoid issuing verdicts without addressing the major concerns of downstream states. Godavari water disputes tribunal verdict is an example of strict adherence to stipulations of IRWD Act. Tribunals have no jurisdiction to stipulate water use for a specific purpose or in specific project particularly in last downstream state as it is not empowered by IRWD Act. Importing other river waters and exporting to other river basins in the last downstream state is neither in the ambit of IRWD Act nor of tribunals created under IRWD Act.

IRWD Act literally stipulates that first right holder to use, control and distribute interstate river water is the prevailing beneficiary / last downstream state in whose territory the river is joining the sea. Any further use, control and distribution of an interstate river / river valley in an upstream state are subject to consent by all downstream states. IRWD Act has no provision to stop construction of water use projects in last downstream state of a river basin based on upstream state representation. IRWD Act also does not contradict the absolute powers of a State Government to use, control and distribute water of an interstate river in its territory as long as it is not affecting the existing interests of other basin states.

Case study: Krishna river basin is distributed in Maharashtra (MR), Karnataka (K) and Andhra Pradesh (AP) states. AP is the last state in this basin in which the river joins Sea. MR is the most upstream state in the river basin. Krishna river water first flows from MR territory to K territory and later to AP territory. K and AP are downstream states to MR in Krishna basin. AP is downstream state to K in Krishna basin. The main tributaries of Krishna river are Tungabhadra and Bhima rivers. Bhima originates in MR and merges with Krishna River in K. Tungabhadra originates in K and merges with Krishna river in AP.

AP and K have legal right to raise water dispute under IRWD Act to question the water use, control and distribution by MR in its territory. Only AP has legal right to raise water dispute under IRWD Act to question the water use, control and distribution by K in its territory. In other words AP need not take any consent from both K and MR. K need not take consent from MR but shall take from AP. MR shall take consent from both AP & K under IRWD Act.

The Krishna water disputes tribunal - I (Bachawat Tribunal) has not stipulated any regulated flows from upstream states to downstream states which was the condition when many of recent projects were not constructed in upstream states. Earlier, entire Krishna delta irrigation used to get sufficient base flows from Prakasam barrage for 10 months in a year without any assistance from upstream storages. Similarly Kurnool Caudapa (KC) canal and Rajolibanda Diversion Scheme (RDS) in AP used to get base flows from the Tungabhadra river without depending on storages. Also there used to be adequate base flows

reaching the sea to sustain the ecology of the river throughout the year. Bachawat Tribunal allotted all the base flows to the upstream states while allotting the available river water among the basin states. The deprivation of base flows in AP from upstream states was not compensated properly by Bachawat Tribunal. The downstream states (particularly AP) spent huge money in creating the needed storage capacity to restore the affected base flows partially. This aspect is to be considered while allotting the remaining water of Krishna River by the ongoing Justice Brijesh Kumar tribunal by giving regulated base flows from upstream states to downstream states. This is feasible from the existing infrastructure available in upstream states since the created water storage capacity is exceeding 75% of yearly average water available in the river.

It is relevant to mention the concluding direction of Justice UC Benerjee while issuing Supreme Court judgment dated 25/4/2000 on the suit filed by Karnataka regarding surplus water use by AP

“..... The tribunal is directed to look in to the matter if and when occasion arises as regards the allocation of the water in River Krishna Basin totally uninfluenced by the observations made by the earlier Tribunal’s view by reason of long lapse of time and the availability of modern technology.”

References:

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