



State of Federalism in India's Water Management: A Commentary

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Abstract

India's unique federalist structure, often referred to as 'quasi' federalism adversely affects the effective governance of water resources across the country. While the newly formed Jal Shakti Ministry aims to rectify some of the underlying issues, especially the lack of coordination and bulbous bureaucracy, there is still an over emphasis on the supply and exploitation of water resources and not enough attention on the resource itself. The ambiguity on dispute mechanism and politicisation of waters that cross state boundaries adds to the lack of robust water management. We need a better understanding of existing water resources, long term needs and a more integrated approach to water management across the country that also aims to safeguard the interests of the resource, along with the development and human needs.

Keywords: Federalism, Water Security, Water Management, River Basins, Water Disputes

1. Federalism in India

Federalism is the division of powers, both legislative and executive, between governments at the centre and those that represent states or regions or provinces within a modern nation state (Malik, 2019). Both State and Centre function with considerable independence from the other within their respective jurisdictions, as seen in

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several countries including the United States, Switzerland, Australia, India and others. While a federation constitutes a coming together of units or states, geographically vast and culturally diverse states give autonomy to its provinces for administrative convenience and to represent regional interests. India broadly falls in this category, where the constitution lays down two tiers of government(!); making the union government more powerful than the states in several regards, and presenting an interesting concept of 'centralised' or 'quasi' federalism. The management of water resources across the country, including river bodies, lakes, underground water systems and others fall within this quasi federal system.

2. The Water Tussle

Water is constitutionally a state subject in India, and state governments are responsible for the governance of water bodies within their boundaries. While all responsibilities of development and utilization of the water rests with the individual state governments, Schedule 7 of the Constitution distinguishes between the 'use' of water within a state and the purpose of regulating interstate waters, giving the union government the power to formulate laws and mechanisms to regulate rivers that are interstate (List 1, Entry 56). Any disputes that arise from river water sharing rest within the domain of the union government which has the power to initiate action and put into place dispute resolution mechanisms. The union government also provides financial assistance, technical frameworks and guidelines on water management to the states and local bodies. States retain autonomy regarding water utilisation for purposes such as water supply, irrigation and canals, drainage and embankments, water storage and water power (List 2, Entry 17) (Ghosh & Modak, 2020). Thus while 'use' of the water remains within the purview of the state governments and local bodies, the union government has far reaching powers that often hamper the overall development of the river body itself. This quasi federal system has resulted in a distribution system between the centre and the states that is somewhat ambiguous, imprecise, and often resulting in jurisdictional chaos.

At the central level there exist a number of Ministries and Departments that deal with the development and management of water resources which include the Ministry of Water Resources, River Development and Ganga Rejuvenation, Ministry of Drinking Water and Sanitation, Ministry of Housing and Urban Affairs, and the Ministry of Agriculture and Farmers' Welfare. The Ministry of Water Resources, River Development and Ganga Rejuvenation, and the Ministry of Drinking Water and Sanitation, along with ancillary departments were merged to form the Ministry of Jal Shakti in May 2019 for better coherence and effective coordination.

The mandate of the Jal Shakti ministry was to bring all the varying ministries under one umbrella and ensure a more streamlined process of water supply within the country. While the emphasis is heavily on supply management, it is hoped that a more holistic system of understanding of water bodies will lead to better management of the health and ecology of water resources. However, several other problems have arisen out of this merger, especially with regards to dispute resolution. This was seen when the Cauvery Water Management Authority (CWMA) was brought under the Jal Shakti Ministry in 2020. The Centre's move could erode the autonomy and dilute the powers of the authority, which till then was an independent body, leaving little space for Tamil Nadu to appeal or argue in its favour (Subramaniam, 2020). There also remains little clarity on new frameworks from the ministry that are somewhat overarching, and don't often reflect the varying realities of water security, availability, access and demand across the country. Coupled with a lack of coordination and cooperation across states, it often results in sub-optimal functioning of services. The new universal water supply welfare scheme to provide potable water to 2.86 crore households by 2024, while significant and needed, presents another set of issues between the centre and the state, especially on implementation, financing, and most importantly on source points of the water.

With regards to management of river bodies, the core ideology behind federalism, however quasi it may be in the Indian context, is also facing its own set of challenges. In 2019, three bills were presented by the union government to the parliament: River Basin Management Bill, proposing the allocation of more power to the

Central bureaucrats over interstate river basins; River Water Disputes Bill, proposing a Dispute Resolution Committee (DRC) and an Inter-State River Water Disputes Tribunal for the adjudication of water disputes to be set up by the Centre (PRS, 2019). While a better system of dispute resolution has been needed in the country, these bills could lead to over centralisation of power with respect to the river basins across the country, leaving the state governments merely as implementation agencies. Their constitutional role is diminishing, and the establishment of several central institutions has been instrumental in bypassing the state governments. States too have been lethargic in the management of the waters resulting in judicial intervention (Bhaduri, 2019). Politicisation and antagonistic relationships between differing governments often overshadow and characterise the age-old question of who gets the final say in the management of the river, the centre, state or local authorities is still under debate, leaving few to speak for the river basin itself.

Undoubtedly interstate river water disputes have historically faced prolonged delays, for example though the time limit was meant to be five years, the Ravi-Beas dispute took over 30 years; Cauvery has consumed 29 years and continues to be an emotive issue, and many others are ongoing. There is a higher dependence on alternative channels, weakening faith in the judicial system, calling into question the federal nature of water management, and raising the problem of non-compliance of awards by interstate river water dispute issues (Sridhar, 2019). For example, while the Cauvery Water Disputes Tribunal gave a final award in 2007, instances of violence in both states continue, making effective and lasting peace tenuous. The Interstate River Water Dispute Act (ISWD) enables an aggrieved state to request the Centre to refer a dispute to a tribunal and thus unless the state asks for it, the Centre has no role, and even in the case of a serious dispute a state cannot directly approach the tribunal. A host of major impediments like institutional lacunae, lack of political will, inadequate appreciation of the ecological and economic costs of such protracted conflict have constantly evaded a sustainable and holistic approach to this issue based on federal cooperation (Chokkakula, 2016). A permanent, centralised tribunal can help the government create a common database for all the cases relating to the disputes. There

should be a clarity on the principles and norms on which the tribunal is based, something that is currently inaccessible for everyone (Shah, 2019).

Despite the formation of the Ministry of Jal Shakti and the consolidation of several departments, there still exist a number of entities dealing with water including the Central Ground Water Board, National Institute of Hydrology, the North Eastern Regional Institute of Water and Land Management, Farakka Barrage Project and others. In many cases the municipalities and panchayats are missing from this picture, where the most water usage takes place. The 2019 Dam Safety Authority Bill is another that shifts the focus away from the current systems of federalism in water, giving the union government more rights and authority. With the proposal for a new authority for dam safety, the bill will devalue the autonomy states have and give more power to the Centre on all dams within a state's territory. The states will be bound to follow the rules and will have no say and purportedly no appeal.

States also have different institutions and authorities, water departments, irrigation departments, and public works departments to develop and manage their resources. The state government receives a significant allocation of funding from the union government, and many areas of administration continue to lie with the Centre, including groundwater, quality control guidelines amongst others, thus forcing the states to align vision and priorities with the Centre. Wealthier states are often less dependent on the union government, the current system continues to hamper effective management of water resources, leaving the resource itself vulnerable to overuse as we are experiencing all across the country. States often pursue their respective territorial visions of water resource development with little or no appreciation for the cumulative impact, which has adverse implications to overall water security. There needs to be a shift towards integrated water resource management and better consensus amongst states with a robust model for interstate coordination, that goes beyond the articulation of a national policy or framework. Overlying risks of climate change, extreme weather events, floods and drought also need to be brought into interstate coordination. Uneven water distribution and development across

states need to be taken into account and will require a better understanding of the water resource itself, both surface and underground.

3. Conclusion

Globally, and in India to a certain extent, there has been a shift towards a more integrated management of water. A new paradigm of water governance takes into consideration various aspects of water use, and also the entire ecosystem of 'water'. The move away from viewing and treating water only as an economic resource is increasingly being incorporated into policies, both within nations and to a certain extent at a transboundary level. In India while this shift is being brought into policy making, there still exists a lack of understanding of water from a larger holistic geo-hydrological cycle point of view. The quasi federalist nature of water governance in India gives rise to a number of obstacles, from disputes, political discourse, lack of interest and hesitancy from the centre. Water resources, especially river basins, need to be studied, analysed and governed from a scientific perspective and not only from a state-centre perspective (Barham, 2001). While the unique system of federalism devised in India carries us forward in many aspects of governance, there needs to be a strengthening of institutional mechanisms and better consensus across the country on long term management of all water bodies.

End Notes

! - The third tier of governance in India, the panchayats, while formed at the time of independence, were given more constitutional powers later during the 73rd and 74th amendments.

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