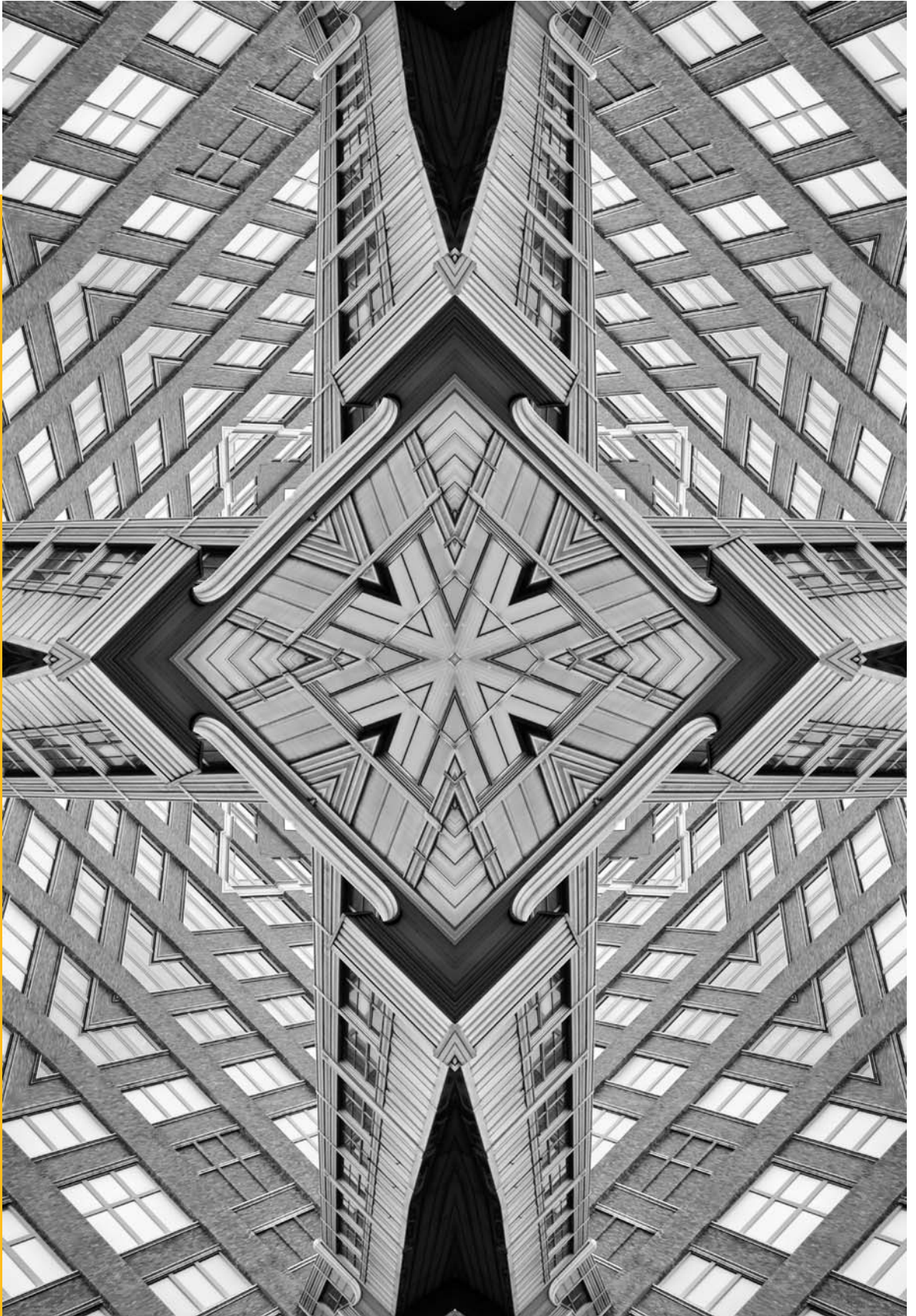


# Occasional Paper



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# Federalism and Interstate River Water Governance in India

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## Abstract

Interstate (River) Water Disputes (ISWDs) are a continuing challenge to federal water governance in India. Rooted in constitutional, historico-geographical, and institutional ambiguities, they tend to become prolonged conflicts between the states that share river basins. This paper examines the constitutional complexities, contentious political federalism, and identity-based electoral political dynamics that fuel ISWDs. It discusses the River Basin Management Bill (2018) and the potential benefits of creating a River Basin Authority. The paper argues for the need to manage the multiple political challenges to cooperative federalism. To this end, institutional trust must be fostered and pathways identified for the positive politicisation of such disputes, for facilitating a public discourse focused on dispute resolution and consensus-building.

India has 25 major river basins, with most rivers flowing across states.<sup>1</sup> As river basins are shared resources, a coordinated approach between the states, with adequate involvement of the Centre, is necessary for the preservation, equitable distribution and sustainable utilisation of river water. Within India's federal political structure, inter-state disputes require the involvement of the Union government for a federal solution at two levels: between the states involved, and between the Centre and the states.

However, interstate rivers in India have become sites of contestations, fuelled by conflicting perceptions of property rights, flawed economic instruments for food security, the lack of an integrated ecosystems approach, and the prevalence of reductionist hydrology for water resource development.<sup>2</sup> Such conflicts over the possession and control of river water have persisted since the inception of the Indian republic, with prolonged delays in resolution due to historical, institutional and political factors.<sup>3</sup> In recent years, increasing water scarcity, a rapid rise in urban and rural demands for freshwater, and contentious political dynamics have further exacerbated the problem (See Annexure: Map 2).<sup>4</sup>

“Conflicts over possession and control of river water have persisted since the birth of the Indian republic.”

This paper provides an understanding of the existing challenges and gaps in the institutional and political fabric of interstate river water governance within the Indian federal system. It offers recommendations for improving the institutional and political ecosystem for resolving interstate river disputes, in the context of the proposed River Basin Management Bill, 2018.

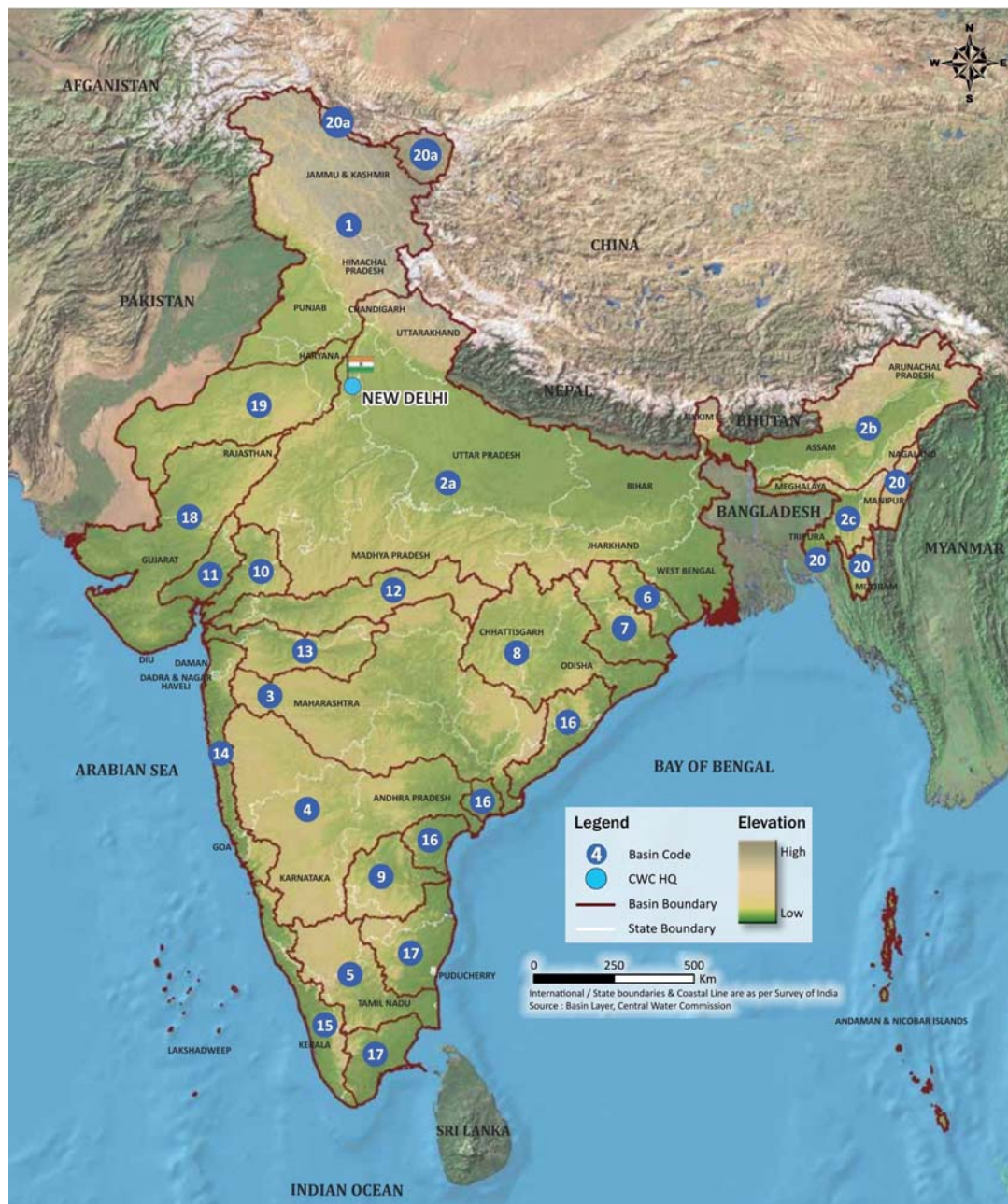
## Table 1: Water Disputes Tribunals

| Tribunal                            | States Concerned   | Date of Constitution | Current Status  |
|-------------------------------------|--|----------------------|---|
| Godavari Water Disputes Tribunal    | Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh, Orissa | April 1969           | Report and decision given in July 1980.   |
| Krishna Water Disputes Tribunal – I | Maharashtra, Andhra Pradesh, Karnataka,                        | April 1969           | Report and decision given in May 1976.  |
| Narmada Water Disputes Tribunal     | Rajasthan, Madhya Pradesh, Gujarat, Maharashtra                | October 1969         | Report and decision given in December 1979. Narmada Control Authority (NCA) was constituted to implement the decision.  |
| Ravi & Beas Water Tribunal          | Punjab, Haryana, Rajasthan                                     | April 1986           | Report and decision given in April 1987. Further Report is pending.   |
| Cauvery Water Disputes Tribunal     | Kerala, Karnataka, Tamil Nadu, Puducherry                      | June 1990            | Report and Decision given on 5 February 2007. Supreme Court modified the decision on 16 February 2018. The Cauvery Water Management Authority (CWMA) and Cauvery Water Regulation Committee (CWRC) were constituted to implement the modified decision. |
| Krishna Water Disputes Tribunal -II | Karnataka, Andhra Pradesh, Maharashtra, Telangana              | April 2004           | Report and decision given on 30 December 2010. SLPs filed pending in the Court. The term of the Tribunal has been extended after the bifurcation of Andhra Pradesh. The matter is under adjudication in the Tribunal.                                   |
| Vansadhara Water Disputes Tribunal  | Andhra Pradesh, Odisha   | February 2010        | Report and decision submitted on 13 September 2017. Further Report is pending.  |
| Mahadayi Water Disputes Tribunal    | Goa, Karnataka, Maharashtra                                    | November 2010        | Report and decision submitted on 14 August 2018. Further Report is pending.   |
| Mahanadi Water Disputes Tribunal    | Chhattisgarh, Odisha   | March 2018           | Under adjudication by the Tribunal. Report and decision are awaited.  |

Source: Central Water Commission.<sup>5</sup>



# Map 1: The River Basins of India



Note: Coding according to the scheme used by CWC.<sup>6</sup>

**Table 2:  
River Basins of India (CWC Scheme)**

| <b>Basin Code (CWC)</b> | <b>Basin Name (CWC)</b>                                    | <b>Interstate or Intrastate</b> | <b>Total Live Storage Capacity (MCM) (Projects with Live Storage Capacity &gt; 10 MCM)</b> |
|-------------------------|--|---------------------------------|--|
| 1                       | Indus (Up to border)                                       | Interstate                      | 16,568.43  |
| 2 a                     | Ganga  | Interstate                      | 60,660.38  |
| 2 b                     | Brahmaputra  | Interstate                      | 11,680.56  |
| 2 c                     | Barak and others   | Interstate                      |  |
| 3                       | Godavari   | Interstate                      | 31,330.39  |
| 4                       | Krishna  | Interstate                      | 49,547.52  |
| 5                       | Cauvery  | Interstate                      | 8867.02  |
| 6                       | Subernarekha   | Interstate                      | 2,322.21   |
| 7                       | Brahmani and Baitarni                                      | Interstate                      | 5,523.69   |
| 8                       | Mahanadi   | Interstate                      | 14,207.80  |
| 9                       | Pennar   | Interstate                      | 4,820.11   |
| 10                      | Mahi   | Interstate                      | 4,984.03   |
| 11                      | Sabarmati  | Interstate                      | 1367.54  |
| 12                      | Narmada  | Interstate                      | 23,604.60  |
| 13                      | Tapi   | Interstate                      | 10,255.79  |
| 14                      | West flowing rivers from Tapi to Tadri                     | Mostly Intrastate               | 14,732.41  |
| 15                      | West flowing rivers from Tadri to Kanyakumari              | Mostly Intrastate               | 11,553.70  |
| 16                      | East flowing rivers between Mahanadi and Pennar            | Interstate                      | 3,026.41   |
| 17                      | East flowing rivers between Pennar and Kanyakumari         | Interstate                      | 1,906.90   |
| 18                      | West flowing rivers of Kutch and Saurashtra including Luni | Interstate                      | 5,524.15   |
| 19                      | Area of inland drainage in Rajasthan                       | Intrastate                      | -  |
| 20                      | Minor rivers draining into Myanmar (Burma and Bangladesh)  | Interstate                      | 312.00   |

## The context

To understand the prolonged and complicated nature of ISWDs in India, it is important to first discuss the shortcomings of the existing discourse on the issue.<sup>7</sup> There are three fundamental structural ambiguities that currently affect the system: federal-jurisdictional, historico-geographical, and institutional. These ambiguities are interrelated and have shaped the constitutional design, institutional response, and political interaction on ISWDs in India.<sup>8</sup> Before independence, the Indian subcontinent comprised British India and several semi-sovereign princely states under its paramountcy. Governmental power was highly centralised, the Secretary of State being empowered under the purview of the Government of India Act, 1919 and the subsequent Government of India Act, 1935. For any dispute between the provinces, the decision of the Secretary of State was final and binding. In the context of water utilisation, the provinces had little authority to make decisions, with the exception of some autonomy regarding irrigation, under the 1919 Act (Item No. 7, Part 2, Schedule 1).<sup>a,9</sup>

In independent India, legislative powers concerning water were distributed between the Centre and the states to ensure optimum utilisation while balancing the interests of the states. Schedule 7 of the Constitution distinguishes between the use of water within a state and the purpose of regulating interstate waters. It gives the Union Parliament the power to formulate laws and mechanisms for regulating interstate rivers (Union List: Entry 56, List 1), while the states retain autonomy regarding water utilisation for purposes such as water supply, irrigation and canals, drainage and embankments, water storage and water power (State List: Entry 17 of List 2), subject to the provisions of Entry 56, List 1.<sup>10</sup> This approach towards the evolution of the legislative and constitutional mechanism regarding ISWDs has resulted in an imprecise distribution of power between the Centre and the states, creating federal-jurisdictional ambiguity.

The Independence witnessed the fusion of 571 disjointed states. Thereafter, states were carved out and federated to form the Union of India. While the states were initially organised on the basis of political and historical considerations,<sup>11</sup> the States Reorganisation Act (1956)

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a This was subsequently extended in Entry 19, List 2, Schedule 7 of the Government of India Act, 1935, allowing provincial governments to legislate on other matters related to the use of water, e.g. water supplies, drainage and embankments, water storage and water power.

finally resulted in 14 states and six union territories. Thereafter, the boundaries of Indian states have continued to evolve based on cultural and political factors, with little regard for the historical and ecological dynamics of these regions.<sup>b,12</sup> The changing borders complicate the existing jurisdictional and resource-sharing agreements and eventually become sources of interstate political contestation,<sup>c</sup> leading to historico-geographical ambiguity in interstate river water governance. Perhaps recognising the issues caused by such redrawing of administrative boundaries, the Union government enacted two other important acts in the same year to create a framework for governing and managing interstate rivers: the Interstate (River) Water Disputes Act, 1956 (ISRWDA) and the River Boards Act, 1956.<sup>13</sup>

With regard to the resolution process for ISWDs, the Supreme Court has made limited intervention to adjudicated disputes, including the enforcement of tribunal awards, holding that such disputes can be resolved under Article 131. According to Salve, the wisdom behind this decision is apparent: the courts, as a constitutional forum, command a certain degree of respect and authority due to its power to punish for contempt. The tribunals lack such authority, thus failing to efficiently enforce an award, especially in disputes that get amplified due to political overtones.<sup>14</sup> However, within this framework, the Supreme Court's role undermines that of the tribunals as adjudicators of ISWDs, despite the latter being established for the implementation of binding awards and their decision granted the same force as an order of the Supreme Court. While Article 262 deters the highest judiciary from adjudicating ISWDs, Article 136 empowers it to hear appeals against the tribunals and ensure the implementation of the tribunal. Thus, the apex court remains the adjudicatory body along with the tribunals,<sup>15</sup> creating an institutional ambiguity regarding which body is the ultimate adjudicatory power on ISWDs in India.<sup>16</sup>

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b While, another country in South Asia, Nepal, has made the territorial division of its provision by keeping ecological factors in mind, its comparison with India might be incongruent given the stark difference between the expanse and complexity of the two countries.

c The States Reorganization Commission (1955) did consider river management in some instances. The most famous one was that of Andhra Pradesh state formation. The Commission felt that bringing the two basins of Godavari and Krishna rivers under unified control would be beneficial, and recommended the formation of a united Andhra Pradesh by merging the Andhra state and the Telangana region of what was then Hyderabad (GoI, 1955: 101-109). Unfortunately, the Telangana separatist movement continued to thrive on the allegations of uneven distribution of river waters.



# Interstate River Water and Conflictual Federalism

The governance of interstate rivers is mired in conflict for two constitutional reasons at the core of *hostile hydro-politics*<sup>d,17</sup> at the subnational level: *conflictual federalism*, and the ambiguity around dispute resolution. Conflictual federalism results when the division of legislative powers concerning water resources is amorphous due to inadequate enforcement of the constitutional role originally envisioned for the Union government. The vacuum thus created has allowed states unregulated access to the waters of interstate rivers, often based on historical arrangements, rooted in conflicting perceptions of property rights over transboundary rivers or a reductionist view of food security. The lack of an integrated ecosystems approach that considers the nexus of land, water and food production is a serious omission in the efforts towards resolving conflicts over interstate rivers.

The traditional justification for keeping interstate rivers under the Centre's purview is that since these rivers are not confined by any boundaries (political or administrative), no state can claim an exclusive right to utilise their waters by depriving another state located downstream.<sup>18</sup> Interestingly, however, while the Union List mentions "interstate water," the State List simply uses the term "water" to signify what is essentially "surface water" confined within the boundaries of the state. This has allowed states to legislate on the entire extent of surface water available within its borders, regardless of whether the source of the river or its tributary is located outside its boundary or the river is draining into another state. In this regard, a state only exercises its right to *use* water for various purposes as long as the Union government deems fit. In the event of indiscriminate use of interstate waters by a state, the Centre can enact a law to prohibit the state in the larger public interest. According to Iyer, the

“India lacks an integrated ecosystems approach that considers the nexus of land, water, and food production.”

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d This term was first used by Dr. Nilanjan Ghosh.

# Interstate River Water and Conflictual Federalism

role of the Union government with regard to interstate rivers is crucial and is reinforced by Entry 20 (economic and social planning) of the Concurrent List. This provision requires states to obtain environmental clearances from the Centre in projects involving major and medium irrigation, hydropower etc., for their inclusion in the national plan.<sup>19,20</sup> Thus, even without formal legislation, the Union government has the power to exercise significant control.

However, the Union government has been reluctant to perform this role, leading to the indiscriminate and unregulated use of interstate river water. The Sarkaria Commission has noted that to move towards such legislation, the Parliament must comply with the precedent condition of declaring the extent to which its involvement is justified. Moreover, the State List's inclusion of interstate rivers within its scope creates operational ambiguity, limiting the Union Parliament's scope of enforcement.<sup>21</sup> Consequently, it has relied on the exigent formula of *dispute resolution*, instead of a proactive basin-wide authority. Sreenivas Chokkakula cites two acts as examples: the Interstate (River) Water Disputes Act, 1956 and the River Boards Act, 1956. The former has been invoked and amended several times, signifying its legal efficacy, while the latter remains untouched despite its importance in interstate cooperation. The river boards created so far, such as the Upper Yamuna River Board and the Brahmaputra Board, have been done through alternative and ad-hoc channels.<sup>22</sup>

Ghosh and Modak identify “conflictual federalism” by analysing two separate forms of disputes over transboundary waters: the subnational dispute over the Kaveri and the transnational dispute over the Teesta.<sup>23</sup> The conflict over the sharing of the waters of Kaveri stems from divergent delineations of property or user rights by the co-riparian states, Karnataka (upstream) and Tamil Nadu (downstream).<sup>24</sup> Historically, Tamil Nadu has used the bulk of Kaveri's waters to irrigate the paddy fields in its delta. It claims that the prescriptive rights of the downstream users in the state must be protected, an extreme principle of property rights known as the “Doctrine of History.” Karnataka argues that delayed development of irrigation in Tamil Nadu should not be a reason for Karnataka to forego its rightful claim over the Kaveri's waters, more so when there is a clear inadequacy of water in the upstream for economic development.<sup>e,25</sup>

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e Contrary to these extreme positions, Hobbes identifies rights as the *result of awards that are reached through negotiations*, which underpins the Hobbesian negotiation model for dispute resolution.

# Dispute Resolution: Constitutional and Statutory Conditions

Dispute resolution is a layered process, as mandated by the ISWD Act. After receiving a complaint from a state, the Union government first tries to mediate. It is only when negotiations fail that the Centre is required to form a tribunal to adjudicate the dispute. However, the states can question the award of the tribunal under Section 5(3) of the ISWD Act. The jump from negotiation to adjudication has drawn criticism, since the transition should be gradual and pass through the intermediate stages of conciliation and mediation. The negotiation between parties may be direct or involve third-party interference of varying degrees. In the case of *good offices*,<sup>f</sup> the third party simply facilitates dialogue between the conflicting states, and once negotiations begin, the functions of good offices are stated to be complete. In the case of *mediation*, the involvement of the third party is more active, i.e. it makes a proposal based on the information supplied by the parties and directs the proceedings towards a peaceful resolution. The method of reconciliation that utilises *inquiry by impartial bodies* or advisory committees and commission is the most proactive third-party involvement, with the body preparing a report that contains proposals for a settlement.<sup>26</sup>

The 2002 Amendment to the ISWD Act specified a one-year limit on the timeline allowed to carry out the process of dispute resolution. The tribunals have been allotted three years to arrive at a final decision, extendable by two years. While the intent is to speed up the process, this amendment has faced criticism on the grounds that the process is divisive and erodes the spirit of accommodation in the conflicting parties, leading to exaggerated claims by both sides. Iyer suggests that while it is only reasonable the states argue their case as strongly as possible, it can be done without acrimony.<sup>g,27</sup> Iyer has identified another critical consequence of the adjudication process: it might push states

“In water disputes, while it is reasonable that states argue their case strongly, it can be done without acrimony.”

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f Good Offices is a dispute resolution method in which an expert provides their extensive knowledge to negotiate a settlement between concerned parties.  
g Politics plays a significant role in furthering interstate divisiveness; this has been discussed in greater detail in a subsequent section.



# Dispute Resolution: Constitutional and Statutory Conditions

to utilise water not due to need but to show that they are using the water that was allocated to them through the process of adjudication or to create vested right to exercise the doctrine of prior utilisation. Therefore, dams and barrages may get constructed despite the lack of a pressing need and the availability of alternatives.<sup>28</sup>

Discussing the involvement of the Supreme Court in ISWDs, Radha D'Souza calls it a dysfunction of "systemic proportion."<sup>29</sup> The apex court has limited the role of the tribunals to quantification and allocation of water between riparian states, and its own role is to be an interpreter of the awards and the water-sharing agreements. Yet, the Supreme Court has repeatedly bailed out the Union government and taken on the responsibility of administrative tasks, upsetting the balance of power between the judiciary, executive and legislature. These issues have greatly reduced the scope of federalism in Indian polity, making states subservient to the Union, not quasi-sovereign entities that became a part of the Union through a series of agreements. D'Souza argues that this is at par with taking away the autonomy granted to federal units upon which their accession to the union was contingent. D'Souza uses critical theory in her work on interstate disputes over Krishna waters to argue that the history of colonial rule has led to the creation of asymmetries between states, and the present water disputes stem from the reproduction of this imperial and colonial power relation. She further highlights that the Supreme Court has been insensitive to the fact that states have an inherent interest to defend the interests of their people.<sup>30</sup>

According to Fali S. Nariman, the tribunals were conceived as an innovative experiment in 1956, but they have failed in their endeavour. Based on his experience from appearing as Senior Counsel in two major ISWDs, Narmada Water Dispute and the Kaveri Water Dispute, Nariman identifies the two-layered scheme of adjudication by a tribunal as the reason for the inordinate delay. The first is arriving at a final decision rendered under Section 5(2) of the ISWD Act, 1956, and the second is the scope for questioning that decision through Section 5(3). Therefore, the parties to the litigation are permitted to seek explanation or guidance from the tribunal on all points,<sup>31</sup> which triggers an endless cycle. Nariman further notes various operational characteristics of the tribunals as problematic, since they do not adhere to any established system. For instance, the sittings are not routine, the functioning is outside the regular court system, and day-to-day or week-to-week hearings are few and far in between. Despite the 2002

# Dispute Resolution: Constitutional and Statutory Conditions

Amendment necessitating a time-bound completion of proceedings, tribunals continue to operate in a laidback manner.<sup>32</sup>

An obvious question at this juncture is why the apex court (or any other court) have been kept out from adjudicating over disputes involving interstate rivers through the insertion of Article 262(2). According to Lahiri, to understand the genesis of this clause, one must refer to Sections 130 to 134 of Government of India Act, 1935, which led to the draft Articles 239 to 242 of the draft Constitution of India. The Government of India Act, 1935 contained five sections (130 to 134) that related to water. Section 133 excluded the jurisdiction of courts, while the other four sections laid out a mechanism for the adjudication of complaints or disputes relating to water. This mechanism was incorporated in the draft Constitution of India through Article 239 to 241, while Article 242 contained the provision of exclusion of any court's jurisdiction.<sup>33</sup> Adv. Lahiri notes that when the Constitution was finalised, all the provisions were dropped except the one that excluded the jurisdiction of courts. Thus, draft Article 242A, as it was introduced on 9 September 1949, effectively became Article 262 of the Indian Constitution, empowering the Parliament to make laws for the adjudication of water disputes while excluding the apex court.<sup>34</sup>

As it stands today, there are certain advantages to continuing the status quo of appointing tribunals for dispute resolution albeit in a time-bound and structured manner of operation. First, engaging tribunals ensures that all other recourses remain viable options, such as mediation and conciliation, and can operate simultaneously along with adjudication. Directly approaching the Supreme Court may result in adversarial outcomes, with the conflict reaching a point of no return. Second, making the Supreme Court the ultimate jurist and dismantling the system of tribunals for adjudication will require a constitutional amendment, which is contingent upon unanimous political will and a strong consensus across the chequered political landscape.

“India’s colonial history led to asymmetries between states, and water disputes stem from the reproduction of such power relations.”

# The Scope for Political Negotiations

There is no dearth in literature on the complexities and challenges in the judicial-legal adjudication of ISWDs. However, little attention has been paid to the potential of *political negotiation and mediation* in building a consensus involving the concerned states and the Centre within the Indian federal structure. ISWDs involve parties that are not only federal institutions of governance but also active political forces functioning within the ambit of competitive democratic polity. Therefore, the focus of the discussion regarding dispute resolution must shift from the domain of “technocratic should” to “democratic could.”<sup>35</sup> Moreover, ISWDs are not simply conflicts over vital resources but inextricably linked to the complex dynamics of ethnic, communal and regional identarian sentiments as well as redistribution and entitlement conflicts—sentiments that drove the politics of territorial state-making and subsequent developmental politics. Thus, the politics of redistribution of resources are deeply enmeshed with the identity politics of the subregional political movements in India. Such emotive issues of identity, coupled with the demand for resources, have triggered major mass-based political mobilisation in the country. ISWDs and the scope for political solutions to such disputes must be understood in this context. As the issue of interstate river water dispute has metamorphosed into a larger political narrative of identity, it is firmly etched in the domain of politics. Therefore, while an issue as vital as this must ideally be de-politicised, it will be difficult to sustain such a solution in the long-term.

“ISWDs are not only conflicts over resources but are inextricably linked to identity politics.”

## Two Enabling Conditions

For political negotiations in India to successfully reach a consensus over any protracted dispute, one of the following conditions is required.<sup>h</sup>

1. **Extreme Politicisation:** The issue in question and the demand for a solution must be highly politicised to ensure that the dispute gets adequate public attention and, consequently,

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<sup>h</sup> These are formulated based on the authors’ understanding of the nature of political mobilisation in India. However, it must be noted that while these are enabling factors, they may not be solely adequate in ensuring amicable political solutions to disputes.



# The Scope for Political Negotiations

electoral priority. This obligates the political parties involved in the negotiation to find a solution to preserve their political interest and ensure their political survival. Therefore, the dispute must be pushed into the domain of public discourse to capture the popular imagination. Such a push requires the active involvement of civil society and media; political parties too can act as catalysts in highlighting an issue to the point where the political elite can no longer afford to ignore it. A case in point is the 2012 mass-based anti-corruption movement in India, which relied on the extreme politicisation of the issue of corruption and the subsequent passing of the anti-corruption legislation. Such “positive politicisation” of an issue can pave the way for concrete political action for conflict resolution.

- 2. Complete Depoliticisation:** If the issue in question, despite its importance, gains little public interest and cannot be successfully politicised, then the dispute in question will have no or limited electoral salience. In that case, the parties involved must be incentivised to resolve the issue for larger administrative convenience and increased benefits for themselves and their respective constituencies. After a political understanding is reached, the political elite can then make the issue electorally salient by brandishing the political settlement as their governmental achievement. An example of such a consensus-based model, in which the Centre and the states have found an amicable way to coordinate, is the implementation of the Goods and Services Tax (GST). The Centre brought the states on board to negotiate the reform in the spirit of “cooperative federalism.”<sup>i</sup> However, while “complete depoliticisation” can help build political consensus, such attempts are challenging in ISWD cases, since they are emotive issues of high electoral salience in many states.

In the context of these probable conditions, the political challenges in the realm of the negotiation as a means of dispute resolution for interstate water disputes in India will be analysed from the spectrum of the political institutions at both levels.

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i In this context, the federal consensus on the GST is only referred to during the initial phase of its adoption. See “GST Council consensus emerging on 1 April 2017 rollout, Rs 25 lakh threshold,” *Financial Express*, September 23, 2016, <https://www.financialexpress.com/economy/gst-council-for-rs-25-lakh-threshold-resolves-on-composition-scheme/387317/>. However, the federal crisis regarding GST implementation that has emerged subsequently is not the case that is highlighted over here. See C.P. Chandrasekhar, “The Great GST Impasse Threatens India’s Federal Structure,” *The Wire*, August 31, 2020, <https://thewire.in/economy/india-gst-tax-states-centre-federalism>.

# The Scope for Political Negotiations

## The Centre's Dilemma

The Central government's involvement in outstanding ISWDs creates a twin political dilemma. First, since river water falls within the ambit of *state subjects*, its governance remains confined to the limits of the state political discourse. Hence, if the national political party or coalition at the Centre has little political stake in the states involved, they find the issue of interstate river dispute and the process of finding a solution to it politically less attractive and extremely technical and cumbersome. Consequently, the Centre does not make efforts towards resolving ISWDs unless there are immediate electoral benefits, i.e. the national political party or coalition at the Centre has sufficient political stakes in the states involved. This might be a part of the reason that the Centre has always been conspicuously ambivalent and hesitant in getting involved in ISWDs, even as it is routinely seen to be accused of usurping the jurisdiction of states in other political, administrative and financial domains.

Second, even when the Centre has either direct political stakes or a political ally in power in one of the states involved in an ISWD, it has historically preferred to pick a side in the dispute for political mileage, instead of taking a bipartisan stand. It uses the emotive issue of subregional identity inherent in water conflicts at the state level to facilitate identity-based mobilisation and polarise the politics of the state where it has political stakes. A case in point was the river dispute over Ravi and Beas between Punjab, Haryana and Rajasthan when Congress (I) was in power at the Centre.<sup>36</sup> The political considerations made by the Centre in this case hints at the larger question of subregional and ethnic political polarisation, which determined both the Centre and the states' approaches towards political negotiation in the late 1970s and early 1980s.<sup>37</sup> Iyer observes, "It has been clear from the start that what we are witnessing in Punjab is as much a political game as a water dispute." Another important case is that of the dispute over Kaveri between Karnataka and Tamil Nadu in the mid-90s, when Janata Dal (Secular) leader H.D. Dewe Gowda was the Prime Minister leading the

“Water disputes are also high-stakes political games.”

# The Scope for Political Negotiations

coalition government at the Centre. Gowda's regional political party in Karnataka—where the river dispute is linked with larger issues of regional identity and pride—made it difficult for his government at the Centre to take an absolutely bipartisan stand to resolve the dispute. In an elaborate study on this topic, Anand suggests that the outcome of the political negotiations often favours the state whose ruling political party has cordial relations with the Centre.<sup>38</sup> Hence, in situations where the Centre finds the river disputes to be politically and electorally beneficial, it prefers to side with the state where it has high political stakes rather than taking a bipartisan stand to mediate the dispute between states.

If the party or coalition in power at the Centre has political stakes in any of the states involved in the river water dispute, it becomes difficult for the Centre to take a bipartisan initiative to resolve the dispute.

## Politics of Identity in the States

At the state level, river water is politically perceived as part of the larger issue of “regional sharing of resources,” which is linked with the ethnic and cultural identity of the state and its people. The political narrative around river disputes is subsumed within the question of regional rights, and any possibility of *water sharing* is seen as a compromise or infringement on the regional autonomy of a state and its interests. The political narrative around the river disputes jumps to a larger scale of identity politics. Hence, the other state involved is often seen as an adversarial “other,” with the discourse of regional chauvinism and state pride dominating the political narrative.

Amidst such polarisation, it becomes increasingly difficult to initiate negotiations for finding a consensus regarding the disputes, since any approach towards consensus requires the state parties to compromise on their original claims. Any compromise made by a state government can be perceived as “selling out” to the other state, which is politically disadvantageous to the ruling party in the concerned states. Thus, the political costs of finding a consensus remain a crucial challenge for the states in reaching a resolution to ISWDs. Fali Nariman captures the political helplessness of the states: “My experience is that none of the political parties in any of the complainant or contesting States (in interstate water disputes) is ever willing to concede a single point to the other State ....”<sup>39</sup> A region-based electoral study further corroborates that the issue of river dispute has a major impact on the voting behaviour of the people.<sup>40</sup> Thus, the possibility of a resource dispute turning into a politically sensitive identity agenda, fraught with the potential of both electoral mobilisation and violent ethnic clashes between states, affects political negotiation.<sup>41</sup>



# From Conflict to Cooperation

The current condition of interstate river water governance in India warrants a new approach for cooperative federalism and interstate water governance. In terms of identifying a unit of governance, river basins are the most appropriate.<sup>42</sup> Located at the confluence of hydrology, geography and ecology, river basins are frequently used as a proxy for ecosystem boundaries<sup>43</sup> and are a superior categorisation than the gerrymandered, mutable boundaries marked by humans on maps. Therefore, river basins have been declared essentially depoliticised spaces, citing scientific legitimacy and drawing ‘nature’ into the equation to simply override any other consideration. Wester & Warner note that depoliticisation becomes an attractive option for those who seek to neutralise all opposition or persuasive alternatives.<sup>44</sup> Potter notes that the scientific discourse, being largely objective, does not entail any subjectivity, uncertainty and agency.<sup>45</sup> On the other hand, politicisation is essentially conflictual, messy and entails a drawn-out process.

However, the premise that a natural boundary is beyond scrutiny or guarded against any difference of opinion is questionable. River basins are open systems and are essentially connected to the sea and the atmosphere. Their boundaries often do not conform with the boundaries of an underlying aquifer; the water within the river courses are connected to the underlying aquifer system, and groundwater may contribute to streamflow (and vice versa) based on the movement of the water table. Moreover, the use of water may transcend the boundaries of river basins due to inter-basin water transfer.<sup>46</sup> Virtual water<sup>j</sup> exports in a water-scarce economy may exacerbate water stress in the basin, due to factors operating outside the hydrological boundary.<sup>47</sup> The natural delineation, too, can be ambiguous, depending on the physical characteristics of the land, making any political boundary based on watershed a problematic proposition.<sup>48</sup> Ecologically, the continuity of landscapes transcends boundaries of river basins, and natural resources such as wildlife and forests are essentially transboundary.<sup>49</sup> Thus, a river basin is as much a political unit as it is a natural unit, and the space for politics is essential for effective governance. Institutions for governance,

“Even as river basins are a superior categorisation of ecosystem boundaries, they are not beyond scrutiny.”

j The volume of water content a product has consumed throughout its growth cycle.

# From Conflict to Cooperation

even those at the watershed level, must consider the complexity and diversity in governing arrangements that may result due to non-confirmation to hydrological boundaries.<sup>50</sup> However, the Constituent Assembly Debates reveal that the issue of ISWD occupied limited space in the priority pyramid of the Constitution makers, limiting the scope for debate and discussion on the topic.<sup>51</sup> With national unity being the foremost concern of the Assembly, especially in the backdrop of the violence of Partition, river-water sharing amongst the states appeared to be a relatively less contentious issue at the time.

A pressing concern with regard to ISWDs in India is the reductionist and fragmented approach to water governance. As previously discussed, the Centre has willingly or circumstantially withheld itself from its constitutional mandate of laying out a structure for the governance of interstate rivers. Consequently, the divergent perspectives of property and user rights of states have created a fragmented model of water governance. In recent years, there has been a global shift towards an Integrated River Basin Governance,<sup>k</sup> with the adoption of a holistic approach.<sup>52</sup> This new paradigm of water governance takes into consideration various aspects of water use, e.g. treating water as an integral component of the global geo-hydrological cycle, essential for the long-term sustenance of ecosystem services. It effectively critiques the commonly held view that water is an economic resource that can be stocked for human use and proposes that an ever-increasing supply of water is not a prerequisite for ensuring food security. Thus, *demand management of water* is a key feature of this new paradigm. In this context, Bandyopadhyay proposes a synergy-based approach called “Integrated Water Systems Governance” (ISWG), which calls for the internalisation of four important constituents of flow in rivers whose dynamic interactivity creates equilibrium: Water, Energy, Biodiversity, and Sediments (WEBS).<sup>53</sup>

In a major shift from *inertness* to a *proactiveness*, the Union government proposed the River Basin Management Bill, 2018. The Bill is not only a step towards breaking free from constitutional deadlock and reliance on an exigency-driven contingent response (i.e. conflict resolution) but also an attempted shift towards Integrated River Basin Management. The Bill proposes to establish a River Basin Authority (RBA), for the “regulation and development of interstate rivers and river basins.” It uses various normative principles such as participation, cooperation,

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k Within this framework, the river basin is identified as the unit of governance.

# From Conflict to Cooperation

and sustainable utilisation of resources; integrated management of water; demand management and conjunctive use of water for effective and efficient management of river basins (The Draft River Basin Management Bill, 2018).<sup>54</sup> However, it remains to be seen whether these principles will be reflected in the operations. Barham notes that when decision-making moves to the river-basin level, hard-won democratic rights in conventional social and political domains must be assured in the domain.<sup>55</sup> A move for centralisation, according to Barham, may lead to calls for abolishing, downsizing, or streamlining existing regulations of social systems of organisation to conform to the watershed standards. Moreover, while watershed-level rules may be desirable for holistic environmental planning, the established social and political institutions in place may fail to ensure that deliberations over these rules will be democratic.<sup>56</sup>

The draft River Basin Management Bill, 2018 envisions a two-tier managerial system for enabling cooperation between states. The first tier will comprise of the Governing Council,<sup>l</sup> representing political aspirations, and the second tier will be the Executive Board,<sup>m</sup> which will be beset with the official work. Additionally, an Advisory Council has also been proposed, albeit not mandatorily. The Executive Board is mandated to prepare a River Basin Master Plan for the interstate rivers, devise schemes, and monitor the progress of such schemes. The Governing Council is entrusted with the responsibility of approving the plan and making recommendations regarding conservation, regulation and development of water resources.<sup>57</sup>

“Will the proposed River Basin Management Bill lead to a more integrated governance framework for water resources?”

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l The Governing Council will consist of chief ministers and ministers in charge of water resources from each of the basin state, along with the chairman of the executive board (nominated by the Central Government).

m The Executive Board will be headed by the chairman, a financial adviser, and state-level bureaucrats and experts in environment, water-planning, power, groundwater.

The Centre has taken an important step by attempting to create a permanent platform for sustained deliberation over interstate rivers by the basin states for cooperative and coordinated action. However, some concerns remain. Chapter 3, Section 8 of the Bill mentions that water should be used as a “Common Pool Community Resource” held by the state in the doctrine, but it does not specify how the community will be involved in managing the resource without having absolute user rights over it.<sup>58</sup> This reiterates the concern about whether the established social and political institutions can ensure democratic deliberations in this area. India is yet to achieve a truly participative and communitarian model of development, which promotes social equity, creates active citizenry and ensures accountability, while also increasing the overall economic well-being.<sup>59</sup> Discussing the National Water Framework Bill 2016, Ghosh and Bandyopadhyay have noted that “master plans” for river basins is an old colonial term that hardly fits today’s parti.<sup>60</sup> To avoid the monopolisation of power, they recommend that the plan include two elements:

“The promotion of social well-being should be one of the goals of any law attempting to create a river governance mechanism.”

- a. Ecological restoration and conservation of aquatic biodiversity, in addition to the balancing of water supply and demand for human use in the management objectives and outcomes of the basin plan.
- b. The identification of key issues and risks to river basins and the strategies needed to address them in both the short and long term.

Chapter 4 of the Bill provides an impression that all-round needs of the basin are to be considered and that “all basin states shall ensure coordination with the aim of producing a single master plan for the interstate river basin.” However, it fails to postulate how this will be ensured and who will anchor the process of “coordination,” especially in the absence of any representatives from the Union government. The



position of the chairperson of the Governing Council is mandated to be filled by the chief ministers of the basin states, on rotation, instead of a neutral party who would consider the long-term goals of the basin. Since states will work in their own interest by constitutional design, this mandate wastes an important position, which could have been used to facilitate the interaction between the rest of the members of the council. Moreover, allowing direct coordination between states that will primarily attempt to secure their own interests seems to suggest that a basin can be governed as fragmented units, in direct contradiction to a holistic planning and ecosystems-based approach. In such a scheme of governance, where the spokesperson for each user is part of the decision-making body, who will speak for the ecosystem?

Similarly, despite an emphasis on the equitable and sustainable use of water, experts in the Executive Board consist only of domain experts, with no mention of social scientists or interdisciplinary experts. An open-ended provision has been included in Chapter 5, Section 15 (Constitution of Executive Board), almost as an afterthought: “The executive Board may seek assistance of any expert or experts whose advice it may desire in performing any of its functions under this Act.” Thus, the present constitution of the executive board is aligned with the same dysfunctional paradigm that has been at the root of issues in ISWDs.

In his analysis of the Bill through the lens of social justice, Dixit notes that it does not state as one of its goals *the promotion of social well-being of the communities* and makes no mention of considering the social and economic conditions of the people. Many people are intrinsically dependent on rivers and other water bodies, and any direct action on the river could impact livelihoods.<sup>61</sup> The River Basin Authority must develop adequate capacity for understanding the unique needs and realities emerging from the interplay of socioeconomic factors. Interdisciplinary knowledge would also prove immensely vital for devising appropriate plans to adapt to a changing climate. Discussing the connections between climate change and the water environment in the Danish context, Larsen and Kørnøv conclude that a shift is necessary in the River Basin Management Plans, from a model that builds upon measurable indicators such as simple time horizons, quantification and aggregation to one that incorporates complexity. This can be achieved through a supplemented social model of scoping, with stakeholder involvement in the decision-making process for adapting to climate change.<sup>62</sup> The River Board Organisations (RBOs) for transboundary river water governance provides for autonomous and consensus-based decision-making mechanisms, transparent and

# Recommendations

effective data and information-sharing mechanisms, and provisions for meaningful stakeholder involvement, thereby acting as a spur for any institutional mechanism that can improve the functioning of the River Basin Authorities.<sup>63</sup> However, the existing institutional complexities and political compulsions within the Indian federal system pose a formidable challenge to a truly autonomous long-term river water governance apparatus. The primary concern is how the RBO will maintain its autonomy if the ruling parties at the Centre and in the states choose to prioritise their immediate vested interests. In certain cases, the RBO may have to penalise concerned parties in case of non-adherence to its consensus-based decisions.

In addition to the creation of institutions at the river basin level, cooperation entails interplay of politics, since river basins are as much a political unit as they are a natural one. It has already been adequately demonstrated that the course of litigation and adjudication for resolving disputes can become extremely adversarial between the conflicting states. This often results in either non-implementation or delayed/improper implementation of the tribunal or court verdicts. Thus, formulating an alternative to political negotiation is the only long-term and durable solution to river water conflicts in India, with a political will that can forge an amicable consensus for mutually agreed river-water sharing.

“The complexities of India’s federal system pose a challenge to a truly autonomous river governance apparatus.”

Consensus on river governance must be simultaneously achieved in two levels: *federal consensus* (at the institutional level as argued by Chokkakula)<sup>64</sup> and *electoral consensus* (for resolution at the site of mass politics). A sound solution must acknowledge that the federal dynamics in India needs confidence-building, both between the Centre and states as well as amongst the states. Consensus-building, based on sustained political deliberation, must be carried out in an institutional environment that guarantees fair representation of the states. History shows that mutual suspicions have often derailed the process of political negotiations, especially for states ruled by opposing political parties or coalitions, and in the case of states governed by parties opposed to the national ruling party. These animosities have affected the efficacy of the existing institutional mechanisms.


Since “federal consensus” can only be achieved when the parties involved find it politically beneficial, institutional confidence-building is a necessary condition for fostering such consensus for ISWDs. This can lead to an institutional politicisation of the dispute within the federal framework, where the political actors can deliberate at the institutional level, keeping in mind the political feasibility of a possible solution. It remains to be seen whether the RBA, as envisioned in the draft River Basin Management Bill, 2018, can create space for the political actors in the Governing Council.<sup>65</sup> Now that India has entered the phase of “second dominant party system,”<sup>66</sup> with interactions between the Centre and the Opposition-ruled states becoming increasingly contentious,<sup>67</sup> federal interaction on river water governance must be studied closely.

“It would help resolve conflicts if electorates are sensitised to the real economic and ecological costs of prolonged water disputes.”

*Electoral consensus* is equally important in the states where river water disputes have assumed larger political dimensions of regional identity and autonomy. It can be achieved by the “positive politicisation” of the issue, which can only happen when the electorate is sensitised regarding the tangible economic and ecological costs of prolonged disputes. The

# Conclusion

political discourse of regional identity and culture must be unravelled by bringing to public notice the developmental hindrances, economic losses, and environmental degradation resulting from a lack of a solution to the dispute. However, political parties that are the chief mass mobilisers and agenda-setters will have no immediate incentive for such positive politicisation. Instead, other institutions must create the narratives: the media; civil society; academia; and social, political and environmental activists working at the grassroots.

To forge an electoral consensus, the gains of a compromise-induced conflict resolution must be made evident to the people and contrasted with potential losses arising from prolonged ISWDs. The process of 'positive politicisation' of such a bitterly contested issue like river water, despite being tenuous, would give benefits in the long run. This, in turn, will help facilitate federal consensus. In the context of resolving ISWDs, the focus should be on strengthening the existing and evolving institutional mechanisms, and accommodating political sensitivities to find a long-term and mutually amicable path for the governance of interstate river water. 

“The media, civil society, and academia should step up in forging a consensus on the gains of conflict resolution.”



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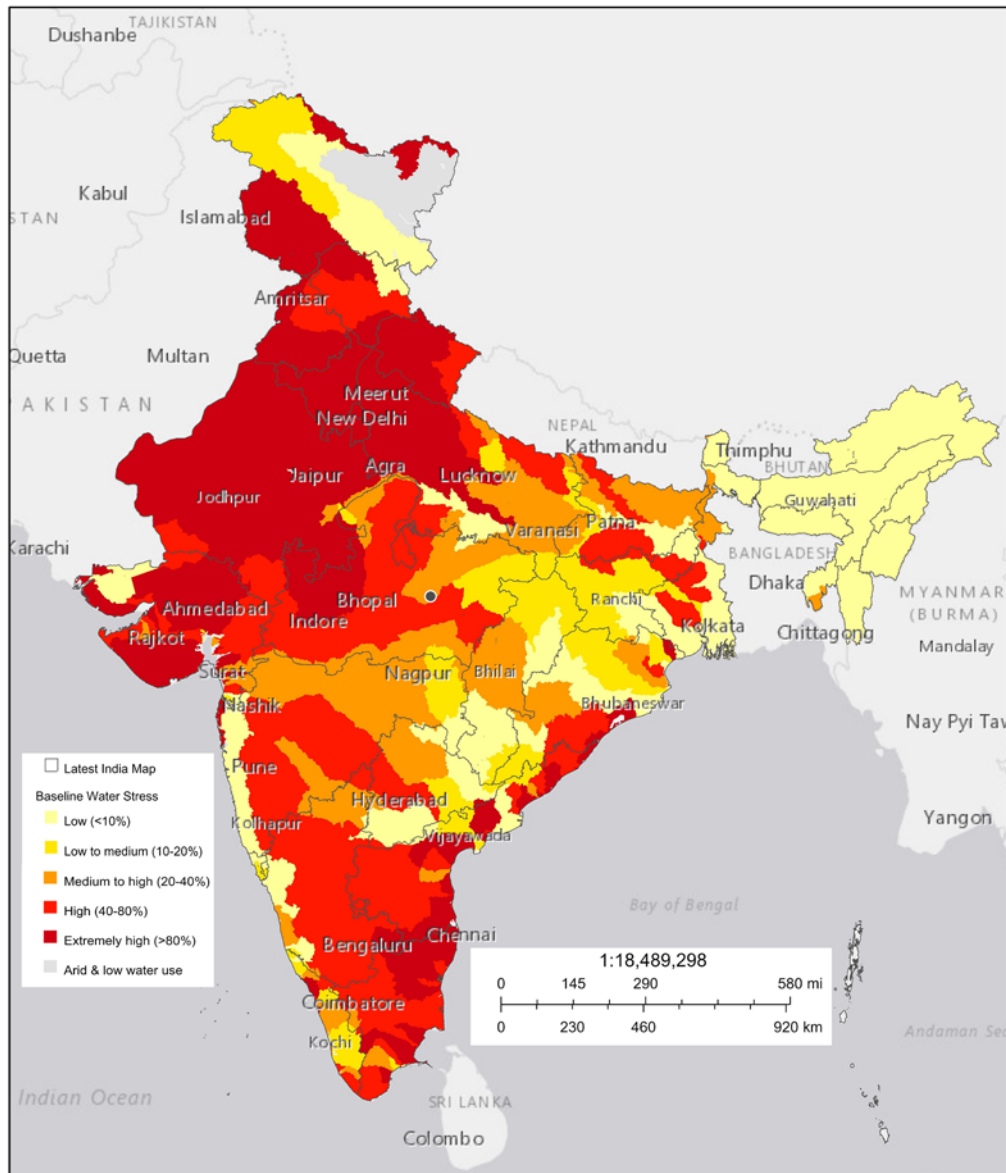
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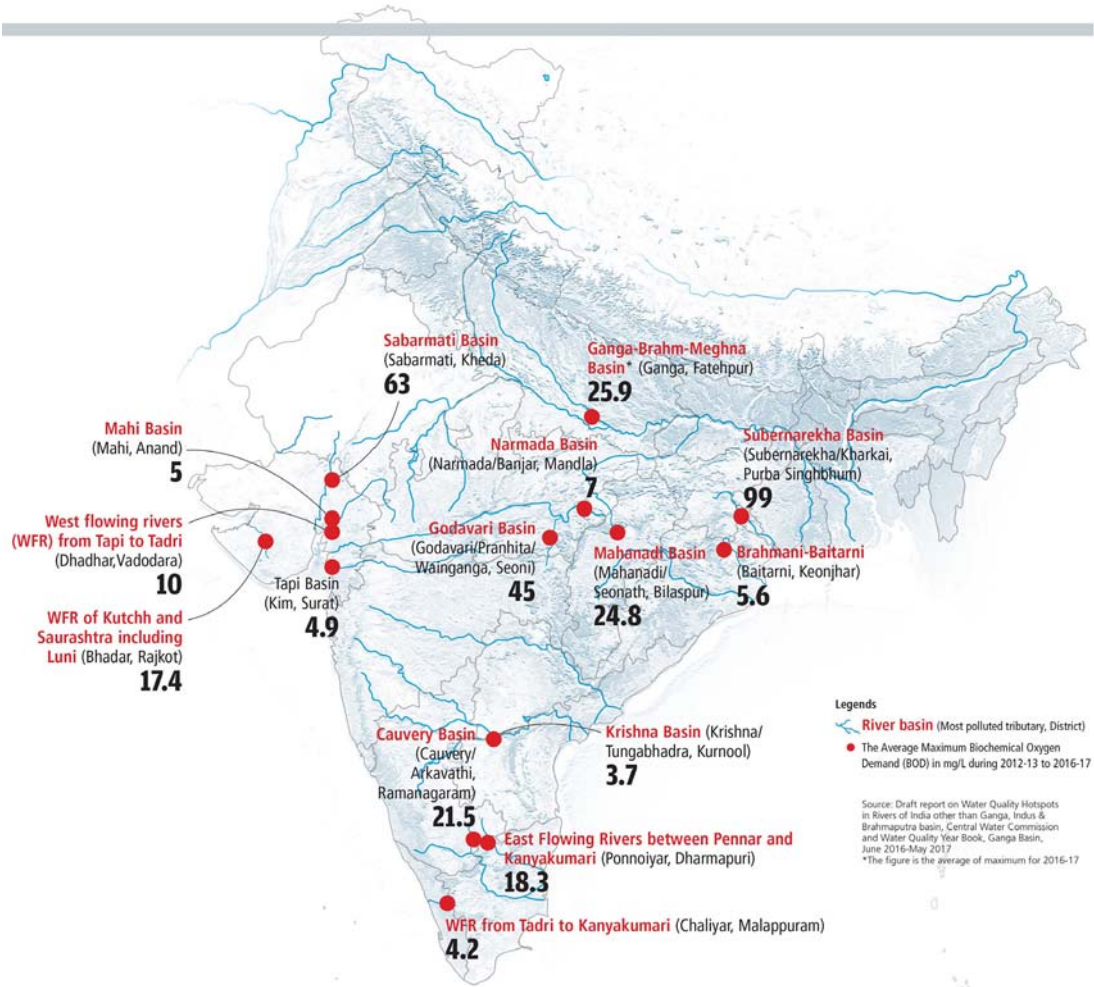
## Map 2: Water Stress Map of India



Source: World Business Council for Sustainable Development, "India Watertool, <https://www.indiawatertool.in/>



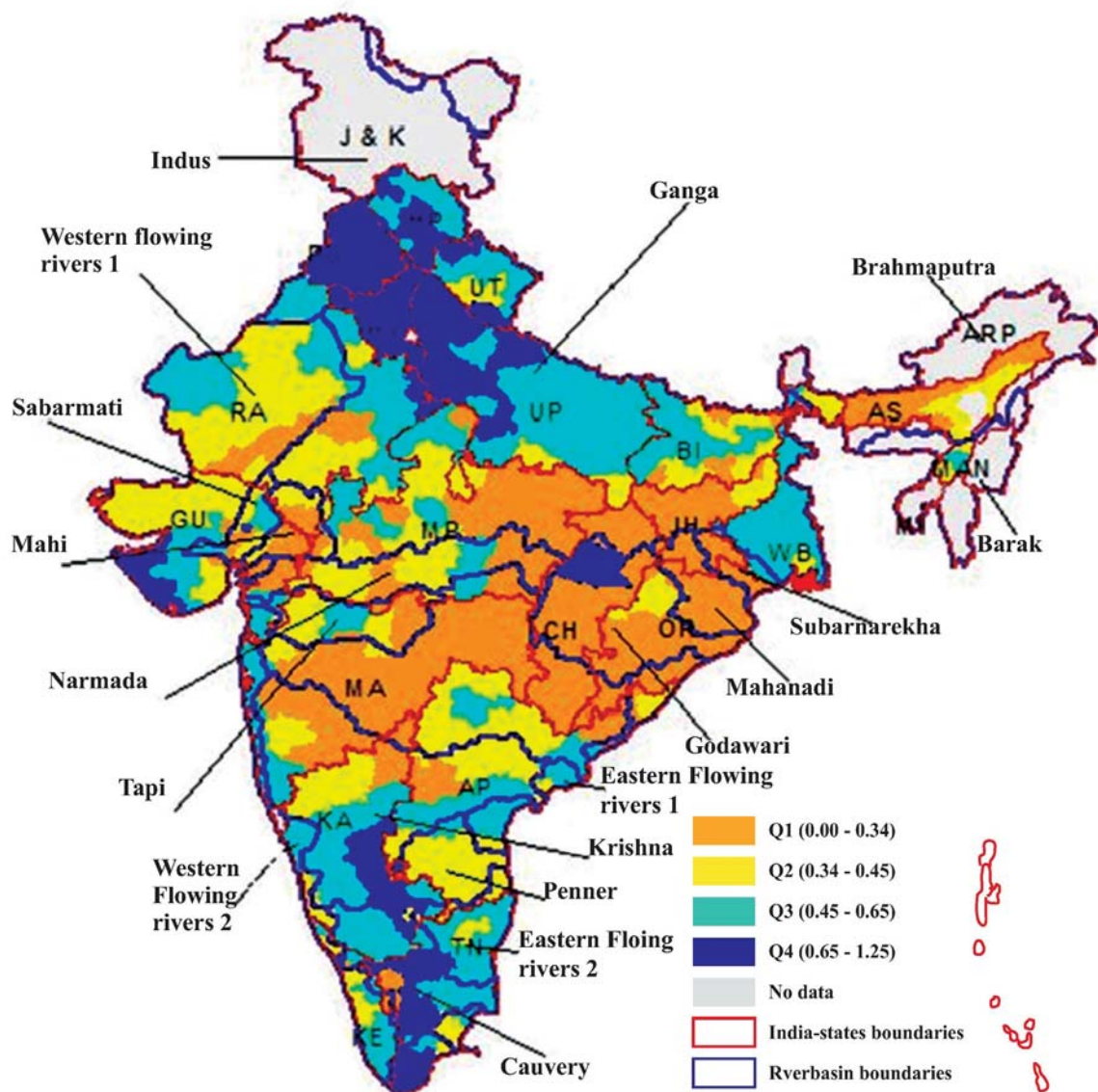
## Map 4: Water Quality at Selected Points on Different Rivers of India



Source: "State of river pollution," Down to Earth, March 14, 2018, <https://www.downtoearth.org.in/factsheet/state-of-river-pollution-59884>.



## Map 5: Variation of Water Productivity across Districts in India



Source: U. Amarasinghe, B.R. Sharma, N. Aloysius, C. Scott, V. Smakhtin, C. de Fraiture, A.K. Sinha, and A.K. Shukla, "Spatial Variation in Water Supply and Demand across River Basins of India," IWMI Research Report 83, *International Water Management Institute*, Colombo, 2004.





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