



INTER-STATE WATER GOVERNANCE

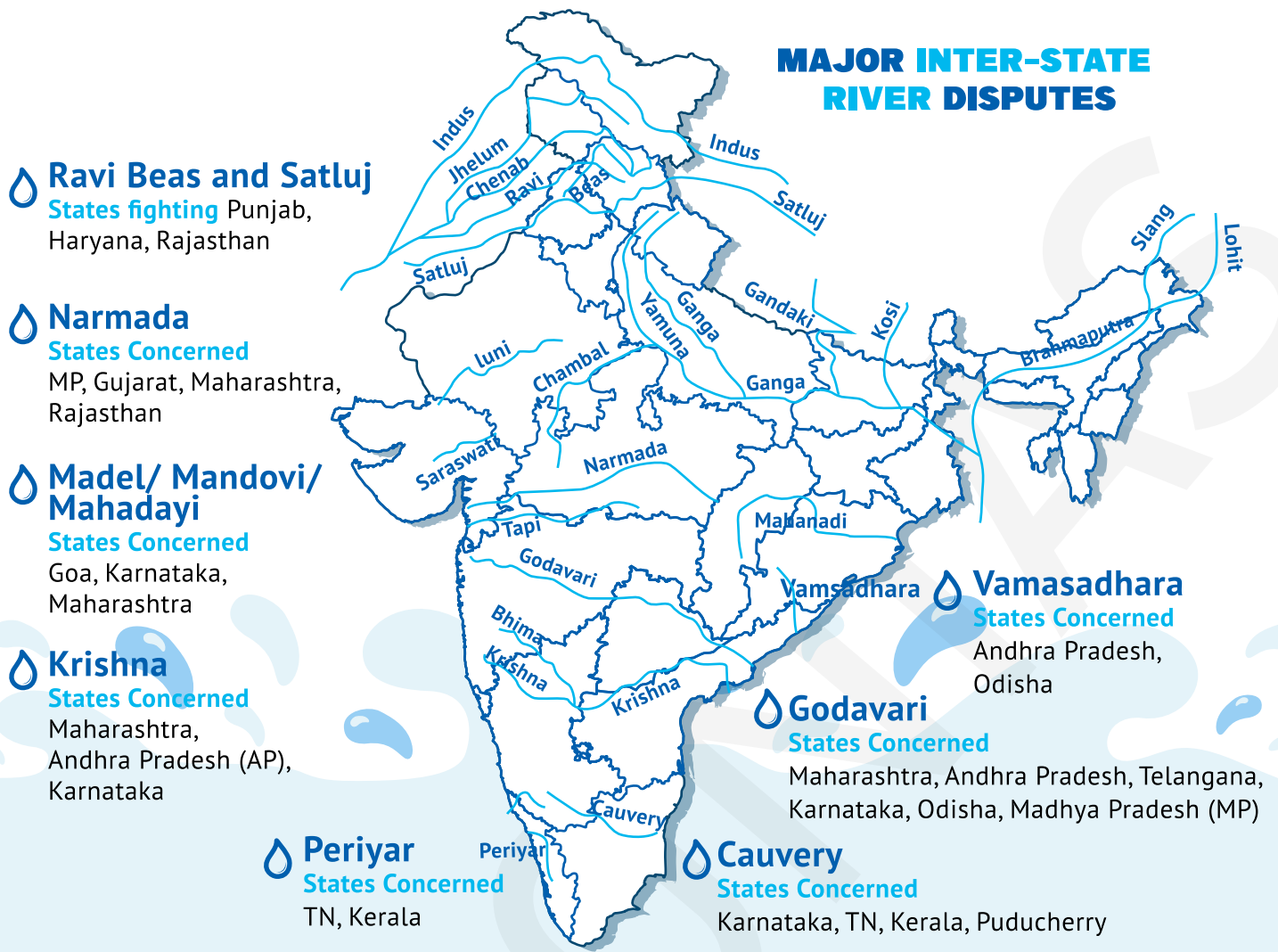
FROM CONFLICT TO COOPERATION

INTRODUCTION

India has 25 major river basins, with most of the rivers flowing across multiple states. As river basins are shared resources, a coordinated approach between the centre and the states becomes necessary for preservation, equitable distribution and sustainable utilisation of river water. However, absence of a clear coordinated approach has led to emergence and persistence of several Interstate River Water Disputes (ISWDs). ISWDs impact the federal water governance architecture in India, cause huge costs to the economy and also affect implementation of interstate river development projects and rejuvenation programmes.

In this context, the Central government, by exercising its jurisdiction over interstate rivers has recently presented three Bills in Parliament: River Basin Management Bill, 2019, River Water Disputes Bill, 2019, and Dam Safety Authority Bill, 2019 to deal with ISWDs. The experts however argue that if enacted, these three bills can further upset the balance of power between states and the Centre.

In this context, it is vital to know What are the major ISWDs in India and what are the factors that fuel these disputes, What is the current framework to deal with ISWDs, What are the challenges associated with the resolution of ISWDs, How the recent steps taken by the government will deal with the issue and what is the way forward to ensure a sound and effective water governance across states. In this edition, we will answer these questions.



WHAT ARE THE MAJOR ISWDs IN INDIA AND WHAT ARE THE FACTORS THAT FUEL THESE DISPUTES?

Over the years, the Indian dispensation has seen several ISWDs, starting with disputes arising over Krishna river in 1960s. Since then, several river disputes have arisen from Ravi and Beas in the North to Periyar in the South.

These disputes are primarily concentrated in Peninsular India due to limited availability of water (compared to rivers connected to Himalayan ecosystem) in the rivers of the region. As of now, almost all peninsular states have ISWDs with other states. Most recent being the legal dispute between Karnataka and Tamil Nadu over the waters of Cauvery.

ISWDs arise when the action of one state affects the interests of one or more other states. Various factors that cause such disputes in India are as follows:

↳ **Asymmetrical access to river waters among riparian states:** When a river flows across a boundary between states, the upstream state is usually at an advantage in comparison to downstream states with its ability to appropriate water first.

☑ The relations between the upstream-downstream states are further compounded by histories of colonial rule and the post-independence reorganization of state boundaries. For instance, British presidencies were predisposed to have had advanced irrigation development compared to the princely states.



◊ **Conflictual Federalism:** Despite the fact that 'interstate water' has been explicitly mentioned in the Union List, there is no such direct acknowledgement in the State List. This allows the states to delineate the "user rights" over waters in ways deemed best by them.

☑ For instance, in the Cauvery case, Tamil Nadu maintains that the principle of prior appropriation or the historical doctrine should form the basis of user rights delineation (based on the prescriptive rights given in the 1924 agreement between the Princely State of Mysore and Madras Presidency). On the other hand, Karnataka is a proponent of the Harmon Doctrine. (See details regarding International doctrines on the next page.)

◊ **Ex-Post governance:** Since Independence, policy ecosystem surrounding inter state river water governance has been driven by exigency-driven contingent responses instead of a proactive approach towards basin-level governance and ignores the idea of continuous interstate cooperation.

◊ **Rising water demand amid scarcity:** Water sharing disputes across the country are only going to escalate with increasing demands, increasing pollution & losses reducing the available water and climate change induced water shortages.

☑ Also, **rise of Minimum Support Price in favour of the water-consuming cereals** over the years has led to manifold increase in water demand, thereby resulting in many interstate water conflicts (e.g. the Krishna, Cauvery, Teesta basins or between Punjab and Haryana).

◊ **Territorialized approaches of states:** In the initial years of single-party dominance, the negligence in definitively carving out the Centre's role has led to the states assuming unfettered and exclusive powers over water governance and contributed to the entrenchment of territorialized perceptions and competitive approaches of states towards water resource development. The initial single-party dominance has given way to coalitional politics, while leaving greater room for sub-regionalism and territorialized assertions of states.

◊ **Fragmented and reductionist approach:** The water governance architecture in India is based on a fragmented piecemeal approach, rather than integrated basin approach that takes a holistic view of the land-water-food nexus. Non acknowledgement of broader linkages of the society, and ecosystem processes and services associated with flow regimes such as hydropower generation, groundwater extraction etc can lead to disputes.

☑ For instance, construction of hydropower projects often disrupt river connectivity, and leads to water disputes between riparian states.

FACTORS CAUSING ISWDS



Asymmetrical access to river waters



Conflictual Federalism



Ex-Post governance



Rising water demand amid scarcity



Territorialized approaches of states



Fragmented and reductionist approach

WHAT IS THE CURRENT FRAMEWORK TO DEAL WITH ISWDS?

The Constitution of India lays down the legislative and functional jurisdiction of the Union and State Governments in respect of water.

◊ **Water is essentially a State subject,** (and has been so since the Government of India Act 1935 of British India transferred irrigation from the control of the centre to the provinces,) and the Union Government has a constitutional role only in the case of inter-State waters.

◊ Under the **Seventh Schedule of the Constitution:**

☑ **Entry 17 of the State List** reads "Water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I (Union List)".



- ☑ **Entry 56 of the Union List** reads "Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

This **allows 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.

Although, 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.

◊ **Article 262** of the Constitution deals with adjudication of disputes relating to matters of inter-State rivers or river valleys granting the Union Parliament the right to make laws to "provide for adjudication of any dispute or complaint with respect to the use, distribution, or control of water of, or in, any inter-State river or river valleys".

- ☑ It also allows Parliament to bar the Supreme Court or any other court from exercising jurisdiction in respect of any such dispute or complaint.
- ◊ Under it, **two such laws have been enacted**. These are the River Boards Act 1956 and Inter State Water Disputes Act 1956 (as amended in 2002).
- ☑ **The River Boards Act** enables the Centre to create boards to advise on the integrated development of inter-state basins, in consultation with the states concerned. The river boards were supposed to prevent conflicts by preparing development schemes and working out the costs to each state.
- ☑ **Interstate River Water Disputes Act** enables an aggrieved state to request the Centre to refer a dispute to a tribunal in case of inter-state rivers or river valleys. Unless the state asks for, the Centre has no role to play.

INTERNATIONAL DOCTRINES AND RULES WITH REGARD TO WATER DISPUTES

Doctrine of Riparian Rights: It emphasizes the recognition of equal rights to the use of water by all owners of land abutting a river, as long as there is no resulting interference with the rights of other riparian owners.

Theory of absolute territorial sovereignty or Harmon Doctrine: Under this doctrine, a riparian state can do what it pleases with its water without regard to its effect on other co-riparian state.

Theory of Prior appropriation: It states that the first user who puts the water to beneficial use, establishes a prior right and the subsequent users can only appropriate what is left by the first user.

Theory of community of interest: It argues that a river passing through several states is one unit and should be treated, as such, for securing the maximum utilization of its waters.

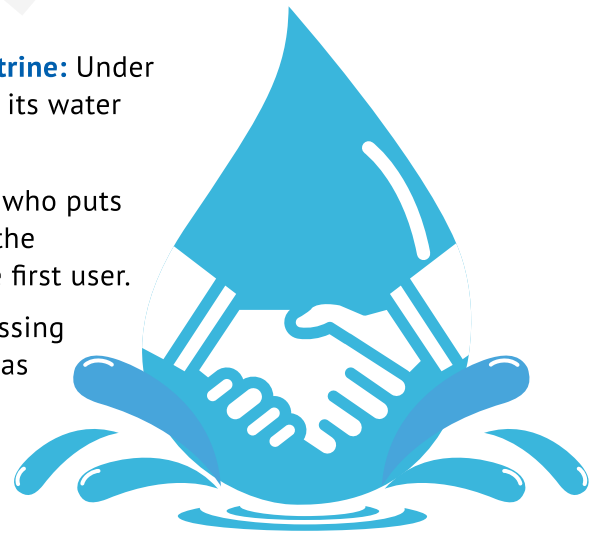
Doctrine of equitable apportionment: It states that inter-state water disputes should be settled on the basis of equality of rights. Determination of equal rights encompasses socio-economic needs of the states, beneficial use of water etc.

- ☑ This doctrine has widely been used in India. For instance, in judgements of The Indus Commission, Krishna Water Disputes Tribunal and Narmada Water Disputes Tribunal.

Theory of equitable utilization of Inter-state waters: It states that each basin state should be entitled to a reasonable and equitable share in the beneficial uses of water of a river basin. The **Helsinki Rules** of 1966 are based on this principle.

Campione Rules: They outline the need to include the water of an aquifer (that is, underground water or fossil water) while determining reasonable equitable share.

Berlin Rules 2004: Adopted by the International Law Association, they provide that basin states should manage the water of an international drainage basin having due regard for the obligation not to cause significant harm to other basin states.



WHAT ARE THE CHALLENGES ASSOCIATED WITH THE RESOLUTION OF ISWDS?

◊ **Issues with the current framework to deal with ISWDs:** The framework has three underlying ambiguities:

- ☑ **Federal-jurisdictional ambiguity:** The distribution of power between the Centre and the states with respect to water under the **Seventh Schedule of the Constitution** is imprecise, creating federal-jurisdictional ambiguity.
- ☑ **Historico-geographical ambiguity:** 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. The changing borders complicate the existing jurisdictional and resource-sharing agreements and eventually become sources of interstate political contestation.
- ☑ **Institutional Ambiguity:** While Article 262 deters the highest judiciary from adjudicating ISWDs, Article 136 empowers it to hear appeals against the tribunals and ensures the implementation of the tribunal. Thus, the apex court remains the adjudicatory body along with the tribunals, creating an institutional ambiguity regarding which body is the ultimate adjudicatory power on ISWDs in India.

◊ **Increasing resistance of states** to any attempt by the Centre to assert its role under the Entry 56, over interstate river water governance. Central institutions like Central Water Commission (CWC) and Central Ground Water Board (CGWB) are perceived to be increasingly irrelevant by states. Moreover there exists an institutional vacuum for implementing tribunal awards.

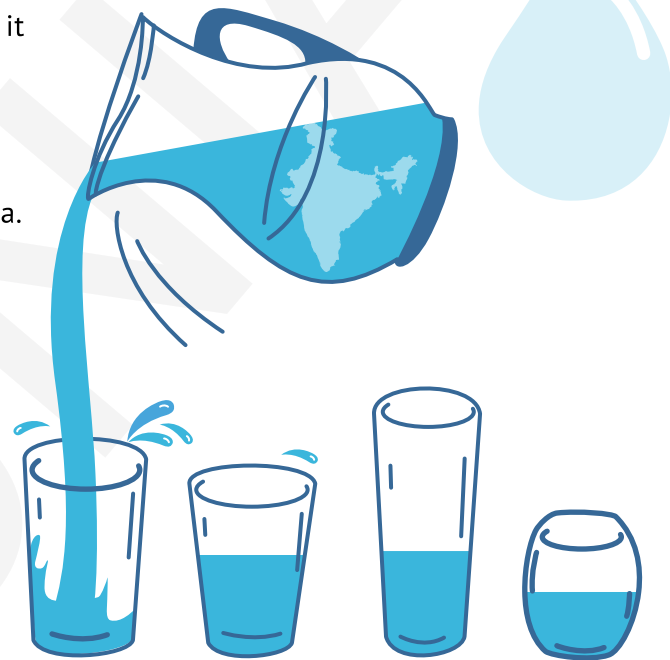
◊ **Inefficiencies of the existing legal mechanisms:**

- ☑ **The River Boards Act** has never been used to create any boards. 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.
- ☑ **The Interstate River Water Disputes Act:** Many times there have been extraordinary delays in constituting the tribunal. For example, in the case of Godavari water dispute, the request was made in 1962. The tribunal was constituted in 1968 and the award was given in 1979 which was published in the Gazette in 1980. Due to delay in constituting the tribunal, state governments continued to invest resources in the construction and modification of dams, thus strengthening their claims.

◊ **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. Any possibility of water sharing is seen as a compromise or infringement on the regional autonomy of a state and its interests.

- ☑ As a result, the other state involved is often seen as an adversarial “other,” with the discourse of regional chauvinism and state pride dominating the political narrative. Thus, the political costs of finding a consensus remain a crucial challenge for the states in reaching a resolution to ISWDs.

◊ **Decisions are often driven by political motivations:** 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. Also, 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.





WHAT ARE THE RECENT STEPS PROPOSED BY THE UNION GOVERNMENT?

To overcome the challenges associated with current framework of ISWDs, following legislations have been proposed-

◊ **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.

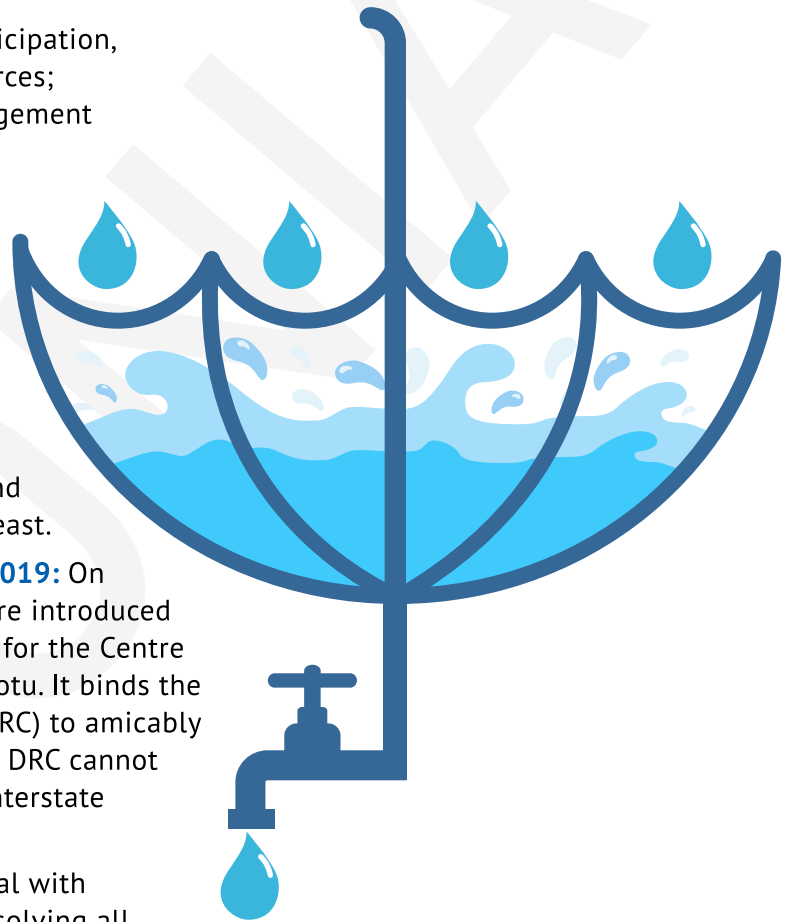
- ☑ The Bill proposes to establish a **River Basin Authority (RBA)**, for the regulation and development of interstate rivers and river basins.
- ☑ It uses various normative principles such as participation, cooperation, and sustainable utilisation of resources; integrated management of water; demand management and conjunctive use of water for effective and efficient management of river basins.
- ☑ The proposed **River Basin Management Bill, 2019** relates to management of all 13 river basins in the country by setting up exclusive authority and making separate master plan for each of them. The authorities will be set up for river basins of Ganga, Indus, Godavari, Mahanadi, Mahi, Narmada, Pennar, Cauvery, Krishna, Tapi, Subarnrekha, Brahmani-Baitarini and Brahmaputra- Barak-inter-state rivers of north-east.

◊ **Interstate River Water Dispute (Amendment) Bill, 2019:** On the basis of Sarkaria Commission's report, the Centre introduced the Bill which if enacted would make it mandatory for the Centre to constitute a tribunal on states' request or suo motu. It binds the Centre to set up Disputes Resolution Committee (DRC) to amicably resolve the issue by negotiations in one year. If the DRC cannot settle the dispute, the Centre must refer it to the interstate tribunal within three months.

- ☑ It prescribes timelines while a permanent tribunal with multiple benches is proposed be set up after dissolving all existing tribunals. The tribunal would be appointed on the recommendation of a selection committee comprising the Prime Minister, Chief Justice of India and ministers from the Law and Justice, and Jal Shakti (water) ministries.

◊ **Dam Safety Bill, 2019:** It seeks to set up an institutional mechanism for surveillance, inspection, operation and maintenance of specified dams across the country. It is expected that it could take away the states' autonomy over major irrigation dams in their territories since the Centre has proposed a new authority for dam safety.

- ☑ This would give immense power to the Centre because the National Dam Safety Authority would decide safety and all other issues. An additional secretary in the Central Water Commission would head the National Dam Safety Authority and the states would be bound to follow the authority's instructions or suffer penalties.



INTER-STATE WATER GOVERNANCE: NEED TO MOVE TOWARDS A FEDERAL ARCHITECTURE

The recent reforms proposed by the Government are based on sound principles and may be effective in the immediate term. But in the long-term, several practical reasons necessitate the revisiting of interstate river water governance in conjunction with focus on Centre-state relations. The federal relationship and its impact on Inter-State Water Governance has become all the more important due to following reasons:

Development of Inland Waterways and Inter-linking of rivers:

Over 105 proposed inland waterways pose new challenges for interstate river water governance. The idea of interlinking of rivers has received support from consecutive governments, yet has not made much headway, partly due to the hurdles of interstate coordination.

Shifting towards Integrated Water Resource Management (IWRM):

Proposed by the National Water Policy 2012, IWRM will itself require a consensus among states. The historical geographies of uneven water resource development among states will require deliberations over the trade-offs in shifting to IWRM.

Poor effectiveness of Ganga rejuvenation programme:

The programme is a response to the intensely stressed river ecosystems and has received unprecedented attention and investments. Yet the 'blind spot' with respect to the tenuous Centre-state and interstate relations remains an unaddressed challenge. Sustaining it over a longer term will require a deeper institutionalization of the programme among the states, in addition to closer interstate coordination and collaboration.

Dealing with emerging challenges:

New challenges of coping with climate change-linked risks adds to the problem of interstate coordination with its uncertainties over space as well as time. Interstate collaboration and cooperation is central to coping with the risk of disasters such as floods.

WHAT SHOULD BE DONE TO ENSURE EFFECTIVE GOVERNANCE OF INTER-STATE RIVER WATER?

National Commission to review the working of the Constitution (NCRWC) recommended a comprehensive central legislation, after consultation with states, to define the constitution and jurisdiction of river boards to regulate, develop and control all interstate rivers. States have a constitutional duty to protect the rights of its people over rivers that pass through them.



◊ **Develop strong and resilient institutional models for interstate coordination, compliance or collaboration:**

River Basin Authorities, or any other forms of interstate institutional models, need to emerge from and build upon the contours of the respective functional spaces emerging from the federal consensus. An enduring and empowered deliberative forum, such as the Inter-State Council, will enable such consensus building and evolution of collaborative solutions.

☑ Also, the processes of adjudication by tribunals need to be reviewed, with due attention to courts' limitations in addressing interstate river water disputes..

◊ **Incorporating Social Justice in Dispute resolution:** Many people are intrinsically dependent on rivers and other water bodies, and any direct action on the river could impact livelihoods. The River Basin Authority must develop adequate capacity for understanding the unique needs and realities emerging from the interplay of socioeconomic factors.

◊ **Interdisciplinary knowledge for devising appropriate plans to adapt to a changing climate:** 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 and the connections between climate change and the water environment. This can be achieved through a supplemented social model of scoping, with stakeholder involvement in the decision-making process for adapting to climate change.

◊ **Devising an alternative to political negotiation in the long-term:** Cooperation entails interplay of politics, since river basins are as much a political unit as they are a natural one. 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.

◊ **Positive politicisation of the issue:** The 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.



CONCLUSION

The water use patterns and efficiency by different entities lie at the root of all Inter-State Water Disputes (ISWDs). 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. Also, in recent years, there has been a global shift towards an Integrated River Basin Governance, with the adoption of a holistic approach. This new paradigm of water governance takes into consideration various aspects of water use, such as its connection with the hydrological cycle and ecosystem services.

The new paradigm stresses that resolution of these disputes cannot be viewed independently and a sustainable solution to the issue lies in looking at ISWDs as part of overall Water Governance. In this context, the idea of "Integrated Water Systems Governance" (ISWG) is gaining traction, which calls for the internalisation of four important constituents of flow in rivers whose dynamic interactivity creates equilibrium: Water, Energy, Biodiversity, and Sediments (WEBS).



TOPIC AT A GLANCE

INTER-STATE WATER GOVERNANCE

1



Factors that fuel Inter-State Water Disputes (ISWDs) in India

- Asymmetrical access to river waters among riparian states
- Discretion of states with regard to user rights over river water
- Exigency-driven governance of interstate waters ignoring the idea of interstate cooperation.
- Rising water demand amid water scarcity
- Territorialized perceptions and competitive approaches of states towards water resource development.
- Lack of integrated basin approach in river water governance that takes a holistic view of the land-water-food nexus.

2



Framework to deal with ISWDs

- Under Seventh Schedule of the Constitution: **Water is a State subject** (Entry 17, State List) and the Union Government has a constitutional role only in the case of inter-State waters (Entry 56, Union List)
- Article 262 allows the Parliament to make laws to provide for adjudication of ISWDs.
 - Under it two such laws have been enacted: **River Boards Act 1956** and **Inter State Water Disputes Act 1956** (as amended in 2002).

3



Challenges associated with the resolution of ISWDs

- Ambiguities associated with the current framework to deal with ISWDs
- Increasing resistance of states to any attempt by the Centre over interstate river water governance.
- Inefficiencies of the existing legal mechanisms
- Consensus building among states is a challenge as water sharing is seen as an infringement of the state's regional autonomy.
- Decisions over resolution of ISWDs are often driven by political motivations.

4



Steps proposed by the Centre to deal with the issue

- River Basin Management Bill, 2019**: An attempt to move away from exigency-driven contingent response towards Integrated River Basin Management.
- Inter state River Water Dispute (Amendment) Bill, 2019**: It prescribes fixed timelines for resolution of ISWDs.
- Dam Safety Bill, 2019**: It seeks to set up an institutional mechanism for safety of dams across the country and to keep a check on State's discretion

5



Measures to ensure effective governance of inter-state river water

- NCRWC recommended a comprehensive central legislation to regulate, develop and control all interstate rivers.
- Develop strong and resilient institutional models for interstate coordination, compliance or collaboration.
- Incorporating Social Justice in Dispute resolution
- Interdisciplinary knowledge for devising appropriate River Basin Management plans to adapt to a changing climate
- Devising an alternative to political negotiation in the long-term
- Raising public awareness about developmental, economic and environmental losses as a result of disputes.