

2. Mahadayi River Water Dispute and Legal Provisions in Existence

Prelims Level: Geography – Drainage.

Mains Level: GS-II Functions and responsibilities of the Union and the States, Issues and Challenges Pertaining to the Federal Structure.

Why in News?

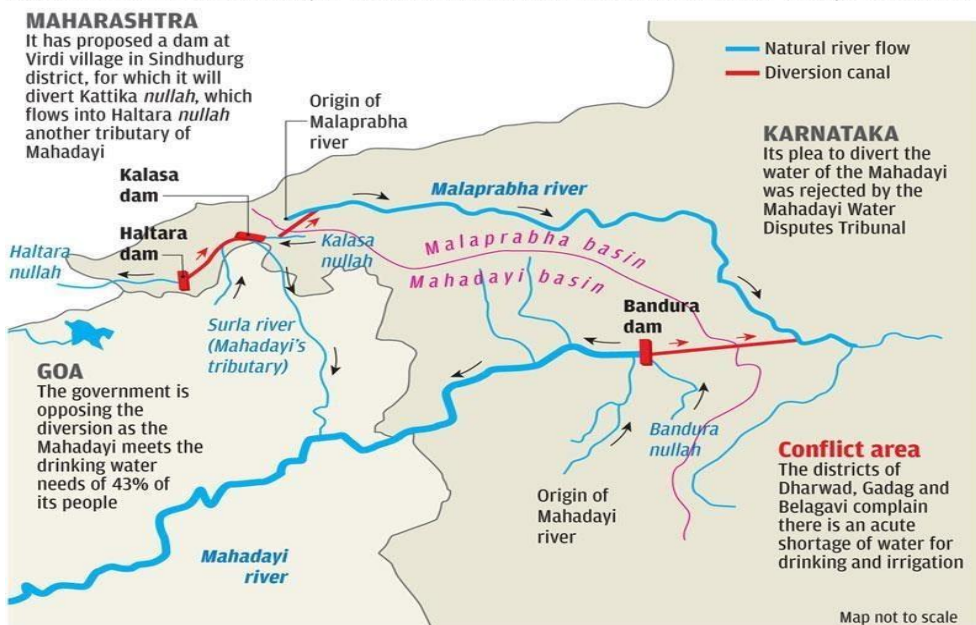
- States of Goa and Karnataka are embroiled in a dispute on sharing of the Mahadayi river water. Related to Mahadayi river dispute, Goa has intensified its opposition to the Kalsabanduri project as the Centre in a written reply to Karnataka government has stated that environment clearance (EC) is not required for its Kalsabanduri drinking water project on the river. As of now the matter is pending in Supreme Court of India.

About Mahadayi River:

- Mahadayi river rises in the Western Ghats, from the Bhimgad Wildlife Sanctuary in Khanapur taluk of Karnataka's Belagavi district. Flowing westward, it enters Goa from Sattari taluk of North Goa districts.
- A number of streams join the flow of the river to form the Mandovi which is one of two major rivers that flow through Goa. It joins the Arabian Sea at Panaji.

Controversial water diversion plan

Under the Kalasa Bandura project, the Karnataka government has proposed dams and canals to divert the Mahadayi's water to address the water deficit in the Malaprabha basin



Total cost of project
₹ 93.98 cr

A total of 501 ha of forest will be affected by the project

The proposed dams are in forest areas for which no forest clearances have been taken

Kalasa and Bandura dams are close to Mhadei and Bhimgad wildlife sanctuaries, respectively

Background of this Dispute:

- The dispute over Mahadayi River began in the 80s and grew stronger in the subsequent decades. The trigger was Karnataka's move to design a number of dams, canals and barrages to route the Mahadayi river water to the Malaprabha basin.
- The state claimed that channeling the river water into the basin of Malaprabha, a tributary of the Krishna, would meet the requirements of water-scarce districts of Bagalkot, Gadag, Dharwad and Belagavi.
- Goa, seeking redressal to the dispute, sought the constitution of a water disputes tribunal in 2002. The state also moved the apex court in 2006 with its demand.
- After sustained efforts by the government of Goa, the **Mahadayi Water Disputes Tribunal** was set up on November 16, 2010 under Inter-State River Water Disputes Act, 1956.

Contention of Goa government in the Court:

- Government of Goa has pleaded that its population is dependent on the river's natural path and any move to divert it would affect its fragile ecosystem.
- It further claimed that the ingress of saltwater in the river dependent on monsoons will ultimately end up killing the state's mangroves and green belt and will overall disturb the ecological balance in the area.

Contention of Karnataka Government:

- The government of Karnataka claims that the surplus water from Mahadayi drains into the sea and that it should be diverted into the deficit basin in Malaprabha to meet the state's drinking, irrigation, agriculture and power generation needs.
- Goa has, meanwhile, denied Karnataka's claims saying it is a water deficient state and limiting the water supply would adversely impact its agriculture production.

Now let us have a brief look regarding the Legal Provisions in existence to solve the Inter-state Water Disputes:

- **Article 262** of Indian Constitution provides for adjudication of disputes relating to waters of inter-state rivers or river valleys. Parliament may by law provide for the adjudication of any dispute or complaint with respect to the **use, distribution or control of the waters** of, in **any inter-State river or river valley**. Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint.

- Accordingly, Parliament has enacted **The Inter-State River Water Disputes Act, 1956** under Article 262. An **Inter-State Water Tribunal** can be formed under the Act to solve the disputes of river water sharing between two or more states.
- Water is in **Entry 17** of **State List** under **Seventh Schedule** of the Constitution. It can be subject to the Centre's arbitration if, and only if, it involves a clear case of conflict or dispute as mentioned under **Entry 56** of **Union List**.
- {As per **Entry 17** of the **State List**, States have competence over water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of Union List of the Constitution. Whereas **Entry 56** of **Union List** relates to 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.}

Analysing Inter-State River Water Disputes Act, 1956:

Purpose of the Act:

- The Act provides for the adjudication of disputes relating to waters of inter-State rivers and river Valleys.

What does Water Dispute Include:

- Water dispute means any dispute or difference between two or more State Governments with respect to:
 - a) Use, distribution or control of the waters of, or in, any inter-State river or river valley
 - b) The interpretation of the terms of any agreement relating to the use, distribution or control of such waters or implementation of such agreement.
 - c) Levy of any additional fee with respect to use of water by other State or their inhabitants.

Procedure to form a tribunal:

- If it appears to the government of any state that a water dispute with the Government of another State has arisen or is likely to arise, then the State Government may request the Central Government to refer the water dispute to a Tribunal for adjudication.
- When a request with respect to water dispute is made by any State government, then the Central Government (if it is of the opinion that water dispute cannot be settled by negotiations) shall within one year from the date of receipt of such request by notification in the Official Gazette, constitute a **Water Disputes Tribunal** for the adjudication of the water dispute.

- So, centre under this Act has the discretion to constitute water tribunal and this at times is based on political considerations of parties enjoying power at the centre and state. This also results in delay to solve the dispute.

Composition of Water Disputes Tribunal:

- The Water Disputes Tribunal shall consist of a **Chairman** and **two other members** nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are **Judges of the Supreme Court or of a High Court**.

Bar of jurisdiction for Supreme Court:

- Neither the Supreme Court nor any other Court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under The Inter-State River Water Disputes Act, 1956.
- It means that once a matter is referred to the Tribunal, no state can proceed to either the Supreme Court or any other Court during the course of proceeding at the Tribunal.

A new Bill on Inter-State River Water Dispute:

- With an aim to settle inter-state river disputes in a speedy manner, the government had earlier introduced **The Inter-State River Water Disputes (Amendment) Bill 2017**.
- The Inter-State River Water Disputes (Amendment) Bill 2017 aims to replace the existing the Inter-State River Water Disputes Act, 1956.
- The 2017 Bill has proposed to constitute Disputes Resolution Committee (DRC) and a permanent tribunal having multiple benches for settlement of river water disputes among states.
 - ✓ Even the Second Administrative Reform Commission (2nd ARC) and Sarkaria Commission had suggested to replace the Inter-State River Water Disputes Act, 1956 and River Boards Act, 1956 with a new law or amend the existing law.

How is the New Bill different from the Inter-State River Water Dispute Act, 1956:

- The Inter-State River Water Disputes (Amendment) Bill, 2017 seeks to streamline the adjudication of inter-State river water disputes and make the present legal and institutional architecture robust.
- The Bill proposes to introduce a mechanism to resolve the water dispute amicably by negotiations through a **Disputes Resolution Committee**, to be established by the Central Government consisting of experts from relevant fields, before such dispute is referred to the Tribunal. This was not provided in the previous Act.

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- The proposed Bill further seeks to provide for a single standing tribunal which will be permanent in nature (with multiple Benches) instead of multiple tribunals as per the Dispute Act of 1956.
 - The proposed Bill also provides for experts known as Assessors as they will provide technical support by furnishing relevant data and information which shall be helpful in the adjudication of water disputes.
 - The total time period for adjudication of a water dispute has been fixed at a maximum of four and half years. This will help in coming to a solution in a strict and scheduled Time Frame.

