

The Political Geographies of Interstate Water Disputes in India

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Abstract

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This dissertation explores the evolving challenges of interstate water disputes in India. It examines how the transboundary geographies of these conflicts relate in turn to the politics of dispute emergence, recurrence, and mitigation. Both formal statist spaces of contestation, and informal political spaces of nonstate engagement, are considered in this way. In contrast to a geopolitical enframing of the disputes as ‘water wars,’ I offer the perspective of an ‘anti-geopolitical eye,’ providing an embodied view from the ground-up of the relational linkages, practices, and processes mediating the political ecology of transboundary water sharing.

The study uses mixed qualitative research methods involving analysis of archival sources and government reports, interviews, and field research to study the politics of interstate water disputes in India. Besides a legal and political genealogy of disputes resolution in India more generally, the study also critically examines the empirical

case of the Krishna river water dispute between the states of Andhra Pradesh, Karnataka, and Maharashtra. The analysis is informed by the theoretical traditions of critical geopolitics, political ecology, and postcolonial analysis as they relate to state-making and democracy in India.

Viewed through the lens of transboundary sharing of interstate rivers, this work describes the spatiality of the overarching postcolonial condition of India. This inquiry into the colonial present of contentious politics has led to several conclusions concerning political mobilization and the nexus between the politics of interstate water disputes and democratic politics; the particular nature of the political ecology of the disputes, and transboundary water conflicts generally; and state-making, interstate relations, and democracy in India. These conclusions offer lessons for informing interstate water dispute resolution policies: the need for reviewing the bar on the Supreme Court's jurisdiction over interstate water disputes, and for supplementing legal approaches with appropriate institutions, practices, and governance structures to respond to the enduring challenges of interstate water disputes in a more inclusive and dynamic way. Overall, the analysis of the political ecology of interstate water disputes also offers insights for advancing efforts to theorize transboundary water conflicts.

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Abbreviations

INR	Indian Rupees
AIADMK	All India Anna Dravida Munnetra Kazhagam
AP	Andhra Pradesh
APRS	Andhra Pradesh Rythanga Samakhya
BJP	Bharatiya Janata Party
CA	Constituent Assembly
CGIAR	Consultative Group of Institutions for Agricultural Research
CMB	Cauvery Management Board
CPR	Centre for Policy Research
CRE	Committee for Research and Exploration
CSO	Civic Society Organizations
CWC	Central Water Commission
CWDT	Cauvery Water Disputes Tribunal
CWPC	Central Water and Power Commission
FRL	Full Reservoir Level
GIS	Geographic Information Systems
GoAP	Government of Andhra Pradesh
GoI	Government of India
GoIA 1919	Government of India Act 1919
GoIA 1935	Government of India Act 1935
GoK	Government of Karnataka
ICRISAT	International Crops Research Institute for the Semi-Arid Tropics
ILA	International Law Association
INR	Indian Rupees
IoA	Instrument of Accession
IRWDA 1956	Interstate River Water Disputes Act 1956
IWMI	International Water Management Institute
JD(S)	Janata Dal (Secular)
KVA	Krishna Valley Authority
KWDT-I	First Krishna Water Disputes Tribunal
KWDT-II	Second Krishna Water Disputes Tribunal
MGR	M G Ramachandran
MLA	Member of Legislative Assembly
MoWR	Ministry of Water Resources
NAFTA	North American Free Trade Agreement

NCRWC	National Commission to Review the Working of the Constitution
NDA	National Democratic Alliance
NTR	Nandamuri Taraka Ramarao
NWDA	National Water Development Agency
NWDT	Narmada Water Disputes Tribunal
OSU	Oregon State University
RBA 1956	River Boards Act 1956
RDS	Rajolibanda Diversion Scheme
RL	Reduced Level
SLP	Special Leave Petition
TDP	Telugu Desam Party
TFDD	Transboundary Freshwater Disputes Database
TMC	Thousan Million Cubic Feet
TWC	Transboundary Water Conflicts
UF	United Front
UKP	Upper Krishna Project
UPA	United Progressive Alliance
WRIS	Water Resources Information System
YSR	Y S Rajasekhar Reddy

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Dedication

For my parents.

Chapter 1: ‘Water wars’ and interstate water disputes

1.1. Introduction

“Many of the wars this century were about oil, but those of the next century will be over water” - Dr Ismail Serageldine. This prophecy first appeared in a 1995 interview in *Newsweek*.¹ It has since received enormous attention and continues to enjoy credibility.²

There is a growing body of scholarly work debunking such speculation (Wolf 1998, Giordano and Wolf 2003).³ But despite the academic analysis, public discourse – as well as policy thinking and a wide array of national and global debates – remain preoccupied with ideas about transboundary water disputes leading inevitably to ‘water wars’ in the imminent future.⁴ This dissertation explores this contradiction at the same time as it focuses on close empirical analysis of an important transboundary water dispute at the interstate scale within India.

Interstate water disputes in India, whenever new disputes emerge or old disputes recur, are widely seen, both nationally and internationally, as precursors of impending water wars. The recent intensification of interstate water disputes during the last decade (with many aggrieved states filing cases with the Supreme Court of India) has only heightened this sense of immanent conflict. These disputes are usually about violations of existing agreements, or alleged injury to their interests due to other state’s actions over transboundary rivers. It is

¹ Also quoted in the *New York Times*, 10 August 1995.

² See for example, the United Nations Secretary General, Ban Ki-Moon’s warning in 2008 about impending water conflicts, <http://www.un.org/apps/news/story.asp?NewsID=25527#.Uawx7Nhz5s4> accessed on 31 May 2013.

³ See http://www.economist.com/node/11293778?story_id=11293778, for an alternative perspective about water wars.

⁴ See for example, Joy et al. (2008), in a recent book on water conflicts in India, observe: “Fortunately, the ‘water wars’, a chance remark by the UN Secretary General [*sic*] that later became a media phrase, forecast by so many, have not materialized (p.xvii-xviii).” Also see Gujja et al (2006).

very often also because of politicization of interstate water disputes, which are increasingly becoming avenues for vote bank politics (Chokkakula 2012, 2014). Transboundary political spaces of interstate water disputes have become sites for grandstanding, shrill campaigns, and demagoguery. And every time an interstate water dispute is reported, the specter of looming ‘water wars’ haunts public debate once again.⁵

Skepticism about the looming threats should by no means lead to a jettisoning of concern altogether. Interstate water disputes do indeed raise concerns. The disputes have led to violence and civil unrest in more than one instance. The economic losses due to disputes are of significantly large scale, and equally importantly, generate social and political concerns.⁶

Indian law bars the Supreme Court’s jurisdiction in interstate water disputes and prescribes setting up independent tribunals for their adjudication when mediations by the center fail.⁷

The Government of India (GoI) has so far constituted eight tribunals for adjudicating interstate water disputes. Out of these, three decisions (“awards”) have been operationalized and implemented. Two tribunals have just begun their proceedings. Three other tribunals have given their awards, but these awards are yet to be notified in the gazette (the official journal/record – publication in the gazette is a legal necessity for the government decisions/documents to come into force).

The law for resolving interstate water disputes provides for states seeking clarifications after the awards are given. The tribunal proceedings under these provisions – known in

⁵ See for e.g., an article by Justice Markandeya Katju in the *Outlook* magazine, <http://www.outlookindia.com/article.aspx?239690> accessed on 31 May 2013.

⁶ There are no comprehensive assessments of economic losses due to interstate water disputes. But consider the following to get a sense of the scale: The state of Tamil Nadu’s Chief Minister recently sought damages from the upstream state of Karnataka to the tune of INR 2,480 crore (more than US\$ 410 million @ 1US\$= INR 60) due to delays in release of Cauvery river waters for just one season.

⁷ Center or central government are used as synonyms for federal/union government of India; ‘states’ are federal units.

administrative parlance as “Section 5(3) hearings” or clarificatory proceedings - are continuing for these three awards. In one of these three, the Ravi-Beas tribunal, hearings have been ongoing since 1987.⁸ Another on Cauvery gave its award in 2007, 17 years after the tribunal was constituted in 1990. During this entire period of 17 years, the Cauvery dispute escalated and recurred several times so that the tribunal spent most of its time responding to interim exigencies.⁹ The third instance is the Second Krishna Water Disputes Tribunal (KWDT-II), which has been constituted to adjudicate the dispute after the expiry of the first tribunal’s (KWDT-I) award. KWDT-I’s award had been in operation for thirty years. Several accumulated and outstanding contentious issues between the party states led to constitution of the KWDT-II. Set up in 2004, KWDT-II gave its final award in 2010, and its Further Award in 2013. But this is yet to be notified; it is unlikely to be anytime soon as the states have decided to challenge the award. Adding complexity, the downstream state of Andhra Pradesh (AP) has recently been bifurcated into two states – Andhra Pradesh (its name retained for the new region) and Telangana. These two states are likely to have many contentious issues over water sharing just between themselves.

Two other tribunals for disputes over the Vansadhara (between Orissa and AP) and the Mahadayi or Mendovi river (Goa, Karnataka, and Maharashtra) have been constituted recently, in 2010. These two tribunals have just begun their work. Another two disputes over the Bhabli (between Maharashtra and AP) and the Mulla Periyar (Kerala and Tamil Nadu) are evolving into ones that may need tribunals constituted, for their differences appear

⁸ The tribunal gave its award in 1987, in a year after its constitution in 1986. The clarificatory hearings began in 1987, but several political events interrupted these proceedings. This included a constitutional crisis created by Punjab’s unilateral annulling of its water sharing agreements with Haryana state. This led to presidential reference to the Supreme Court of India, which is now pending. See Iyer (2004) for extended discussion about the crisis.

⁹ See Chokkakula (2012, 2014), Iyer (2003)

irreconcilable. These emerging new disputes and frequent recurrence of old disputes receive substantial space in newspapers, television, and other media. The political rhetoric and posturing add spice to keep the public imagination occupied. This is what stokes concerns about imminent 'water wars' between states and the possible adverse consequences to federal relations.

This dissertation is an attempt to both empirically evaluate and theoretically complicate these simplistic narratives of looming 'water wars' in interstate water disputes in India. The research draws inspiration from the theoretical body of work debunking water wars, both in terms of their political geographical framings and in terms of the underlying political ecologies that make shared water resources a cause for cooperation rather than conflict. In reality, and in spite of being a source of frequent conflicts and contestations, transboundary water resources rarely trigger wars; instead, they are a reason for numerous cooperative activities between states, both nation-states and federal states. Transboundary water resources interconnect the geographic entities and bond them with variety of interdependencies and associated interstate reciprocities that eventually call for cooperative action. Contestations over these resources are thus better seen as part of ongoing negotiations, which in turn enable functional relations and cooperative compromises addressing the underlying interdependencies and reciprocal exchanges. As a result, in spite of a good number of interstate water disputes, Indian political institutions, including both federal and state agencies, have displayed resilience, avoiding secessionist tendencies and tamping down the threat of rising tensions between states. This may be a sign of the resilience of the Indian state and its democracy that is often celebrated (Kohli 2001). Even though many of the ideals of Indian democracy are not fully realized, the country's political processes have been

successful in averting mass catastrophes such as starvation of populations, secessionist movements (Mehta 2003).

In approaching interstate disputes from this perspective, the research aims to address two specific gaps in the existing body of knowledge about India and its (re)making.

First, there are not many studies that have considered the competitive interstate resource struggles of Indian states as they relate to the ongoing remaking of the nation-state and federal democracy in India. Instead, recent literature about state and democracy in India is filled with stories of success, of emerging strong and vibrant democracy (Kohli 2001; Corbridge and Harriss 2000; Manor 1998, 2001; Varshney 1998). Most of these works look at India in hindsight and attempt to understand how Indian democracy has survived, against all kinds of odds of postcolonial uncertainty, heterogeneous cultural identities, and fractious and polarized political geographies. Some have examined the federal stability in India focusing on relations between the center and the states (Manor 2001); others delved into the historical reasons for its stability (Dasgupta 2001, Varshney 1998); some others focused on movements for reorganization, or sub-regionalism within the states (Kale 2007).¹⁰ But few have addressed how these dynamics play out in the middle ground of uneven development created between the global pressures of market reform on the one hand and regional resource distributions and associated ecological unevenness on the other hand.

While India is still coping with the convulsions resulting from the structural adjustment programs that began in the early 1990s, it has adjusted to neoliberal pressures with less damage than in many other South Asian and sub-Saharan countries. However, it is

¹⁰ Not so recent, but a work of significant relevance to sub-regionalism in India, particularly in the context of the formation of India's 29th state of Telangana in 2014: Reddy and Sharma (1979).

experiencing large-scale transformation of relations between the federal constituents, the center vs the states as well the state vs the state, with the push to rely on local regional resources being framed by the perceived need for autonomy and local resilience amid the exigencies of a globalized world. What kind of impacts do these dynamics have on the nature of competition and conflicts between states for shared resources? How do these conflicts impact state and democratic politics in India? This study seeks to pursue these questions by contributing new empirical analysis of interstate water disputes as they relate to and mediate the tensions between the global, national, and local scales of political geography.

The second literature gap addressed by this dissertation relates to the debate over public policy in India. Resolution of interstate water disputes in the country has been widely reviewed as unsatisfactory, mired by both structural deformities (e.g., the Supreme Court's jurisdictional bar on interstate water disputes) and institutional infirmities (e.g., an absence of institutions for interstate coordination and implementation of tribunal awards).¹¹ These concerns are further complicated by several events involving the alteration of the political geography of India, specifically the reorganization of states and their boundaries through carving new states out of existing states. The recent creation of the 29th state of Telangana in 2014 is one such event, an outcome of a prolonged sub-regional movement for a separate state.

Another development is the recently proposed grandiose project, the Interlinking of Rivers (ILR), aimed at reducing spatial inequalities in the distribution of water resources in the country. The Bharatiya Janata Party (BJP)-led National Democratic Alliance (NDA), in

¹¹ For some interesting accounts of India's long-standing history of interstate water disputes, see Iyer (2002, 2003); Richards and Singh (2002); D'Souza (2002, 2004, 2006).

power during 1999-2004, revived an earlier idea and proposed implementing the ILR project as the long-term solution to uneven distribution of water resources in the country. The proposal generated enormous interest among scholars and policy makers. Involving large-scale water redistribution, the project as designed involved changing the hydro-political regimes of India.¹² Though this was not part of its agenda, the United Progressive Alliance (UPA), in power from 2005-2014, did not totally reject the idea. The project continued to attract attention and provoked debates over its merits and demerits. With another BJP-led government back in power since the recent May 2014 elections, the ILR is back on the front burner. Yet the debates around this project have remained largely restricted to its technical feasibilities or environmental implications (see e.g., Bandhyopadhyay and Perveen 2004, a series of publications from IWMI¹³). Notably, there has been complete indifference to the project's inherent potential to exacerbate conflicts due to proposed changes in the existing hydro-political regimes. Mindful of the unsatisfactory interstate dispute resolution mechanisms now in place, these changes raise serious concerns. This research aims to inform this policy debate through a deeper empirical understanding of interstate water disputes as they concomitantly play out both in the intangible political-legal and the tangible political-ecology arenas at the very same time.

¹² The right wing BJP led NDA government entrusted the responsibility of implementing ILR project to the National Water Development Agency (NWDA), a GoI owned society. See <http://nwda.gov.in/> for more details of the ILR project.

¹³ IWMI (International Water Management Institute), an international research institution and part of the CGIAR (Consultative Group of International Agricultural Research) network of institutions launched a major research project to critically examine the projections made to meet the articulated goals of achieving water security in India under the ILR project. To know more about this project, see <http://nrlp.iwmi.org/main/Default.asp>. Incidentally, my interest in this topic was inspired by my professional proximity to this research project. I was puzzled at the oblivious nature of discourse about potential conflicts due to the proposed alteration of hydro-political geography under the ILR project.

To address these gaps, the research ventures into exploring the political ecology of interstate water disputes by employing a mix of epistemological tools. The basic empirical starting point in this respect is the common feature of transboundary water ecologies: namely that water follows gravity and flows downstream. But adding immediately to the complexity in this respect is the political fact that in flowing in such ways, water ecologies inevitably cross multiple forms of political boundaries, including those of formal capital P Politics, but also those of economics, ethnicity, social patterns, administration, and language. This interaction of political-ecology with diverse forms of political geography in turn necessitates an epistemological openness to diverse forms of power relations and their associated overlaying of landscape, space, and place at multiple local, regional, and national scales.

This approach of defining river water conflicts as a problem of transboundary politics addresses a third gap of existing scholarship, that of international water conflicts. This will be elaborately discussed in the following section, but let me briefly touch upon this gap here.

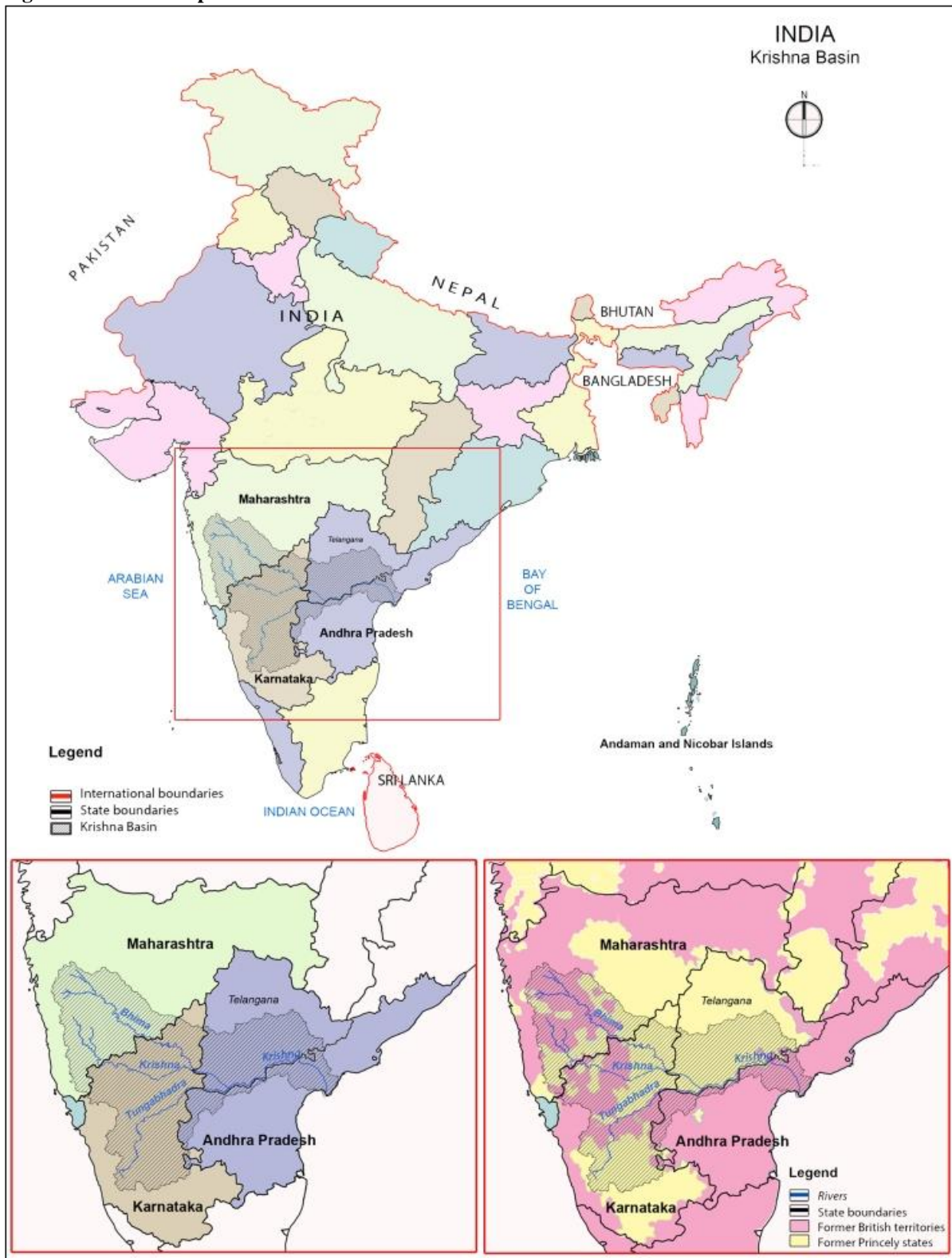
The international water conflicts related scholarship is largely legalist and technocratic, and often tends to address the problems as a set of static events and responses. My approach here instead considers transboundary water conflicts as driven by geographically and structurally induced asymmetries that tend to trigger dynamic, relational, and reproducing political ecologies. Hence it requires construction of relational processes of (re)making conflict, linking spaces and social relations analytically – along poststructuralist approaches such as the ‘countertopographies’ of Katz (2001a, 2001b) or the critical ethnographies of Hart (2004, 2006). Approaching transboundary water conflicts as a transboundary problem enables delineation of these impermanent dynamic, processual, and analytical relationships to present a nuanced understanding of these conflicts and their making and remaking. The epistemological tools of geography about boundaries and boundary making, territory and

scale-making can be useful and productive in exploring these transboundary political spaces of water conflicts. In the following section, I discuss the salience of this approach by locating it in the larger body of work on international water conflicts.

But before that, a brief pause to introduce the empirical setting of this study, the Krishna river dispute in India. The Krishna dispute is one of the first interstate river water disputes of independent India that had to be adjudicated by a exclusively set up tribunal (KWDT-I). The dispute is also the first ever to be adjudicated again after the expiry of the tribunal's award, by another exclusively constituted tribunal (KWDT-II). The Krishna river flows across the three states of Maharashtra, Karnataka, and AP as shown in the map below. Both KWDT-I and KWDT-II adjudicated disputes around issues of water allocations for the three states. KWDT-II gave its final decision in 2013. But the downstream most state of AP has been bifurcated into two states of Telangana and Andhra Pradesh (the name retained for the downstream part of the two) in June 2014, and the dispute is evolving into that of four states.¹⁴ The maps in the Figure 1 show the Krishna river flowing through these states and the spread of its basin in these states. The river emerges in the highlands of Maharashtra in the west and flows through Karnataka and Telangana on its way to meet the Bay of Bengal on the east coast in AP.

¹⁴ The law bifurcating the two states provides for the extension of the KWDT-II tribunal to adjudicate any disputes emerge between the two states. As of the 2nd week of January 2015, the KWDT-II reviewed the submissions of the two states about resolving contentious issues between them.

Figure 1: Krishna dispute: context and extent



Source: Generated from various publications of Census of India and IWMI

1.2. Transboundary water cooperation: the view of an ‘anti-geopolitical eye’

The Krishna dispute had its roots established much before independence, tracing back to the 18th century under British colonial rule. The first major river water sharing agreement goes back to 1892 between the then directly-ruled province, the Madras presidency and the indirectly-ruled princely state of Mysore. These colonial power relations between princely states and British provinces are encoded, embodied, and carried forward by these agreements of water sharing (one of the maps above depicts the former princely states’ territories within modern India’s states). These are further complicated by later reorganizations of boundaries to arrive at the current dispensation of states, which cannot be assumed to be permanent considering the recent creation of the new state of Telangana. While these are visible and administrative boundaries, each of these geographic entities are constituted by the fragmented constructions and imagination of various sociocultural identities and political interests. The history of the Krishna river’s water sharing, similar to other rivers, is filled with frequent conflicts along these constructions and interests.

This dissertation aims to interrogate this outward and apparently conflictual history to reveal the functional and relational interlinkages and interdependencies enabling this very conflictual relation. In other words, it seeks the view of an “anti-geopolitical eye,” using the phrase of O’Tuathail (1996a), dismantling the disembodied and distanced constructions of transboundary waters as sources of conflicts, to decipher the functional and relational basis of interactions leading to conflicts. The anti-geopolitical eye cuts through the framings of transboundary waters as conflicts to reveal these substantive, relational, and apparently indispensable interdependencies and interlinkages enabling the interactions. As O’Tuathail describes the anti-geopolitical eye, while complicitous and reinscribing the hegemonic discourse, the eye’s sitings/sightings/citings from within present a counterdistinct

enframing.¹⁵ The attempt is similar herein, seeking to frame the transboundary water conflictual interactions in their relational interlinkages, in contrast to conflictual relationships between the geographic entities sharing river waters. Here, however, this enframing may be complicitous with the narrative of conflicts, but its counterdistinct perspective does not reinscribe into, or reinforce the hegemonic discourse of ‘water wars.’ On the contrary, it reveals a double-movement of relational interlinkages and conflicts aligning with an alternative narrative of how these transboundary transactions enable transboundary water cooperation. This is an ‘embodied and situated’ view from within, unravels a perspective contradictory to the ‘water wars’ discourse, and substitutes a relational understanding that can be a basis for transboundary water cooperation. This outcome is neither speculative nor hypothetical, but an empirically supported argument by those who challenge the water wars prophecy. My attempt here is to use the tools of both materialist and post-structuralist geography for theorizing transboundary water conflicts (TWCs). As a post-structuralist geographical analysis, the study treats TWCs – here the interstate water disputes in India – as transboundary geographies of ‘becoming,’ focusing on relational understanding with attention to power plays and temporary notions of identity and subjectivity to understand politics (Murdoch 2005: 9-10). In the following section, I locate this approach in the larger body of work about TWCs.

1.3. Transboundary water sharing: a source of conflict or cooperation?

The water wars discourse has remained hegemonic even though it has been challenged over the past couple of decades (Trottier 2003). One empirical set of challenges stems largely from

¹⁵ Also see Dodds (1998), for extended discussion of counterdistinct enframings reinscribing the hegemonic geopolitical discourse.

the extensive work by scholars at the Department of Geosciences, Oregon State University (OSU) in USA, which maintains a GIS based comprehensive transboundary freshwater dispute database (TFDD) on international water conflicts across the world (Wolf 1999a). Since 1990s, many publications emerging out of this department have been the major source of debunking of water wars theory (Wolf 1998, 1999b, 2007; Wolf, Yoffe and Giordano 2003; Giordano, Giordano and Wolf 2003; Giordano and Wolf 2003; De Stefano, Edwards, De Silva and Wolf 2010). There are others too, who challenged the idea of water wars using specific case studies (Swain 2001; Alam 2002). But the water wars theory continues to receive sustained support from research arguing that scarcity and shared rivers are contributing to a high chance of militarized conflicts (Gleick 1993, Gleditsch et al 2006, Starr 1991, Tose et al 2000).¹⁶ However, these studies rely largely on quantitative methods involving datasets built not exclusively for such analysis, rendering results somewhat uncertain and inconclusive. These limitations led to moderating the claims of conflicts over shared rivers in more recent works by these scholars (Hensel, Mitchell and Sowers II 2006, Brochmann and Gleditsch 2012).

Aaron Wolf, who leads the transboundary freshwater disputes research at OSU, is perhaps one of the first to critically examine the works predicting impending water wars. In an article published in 1998, Wolf shows that many of these works rely on loose or anecdotal evidence to build a case for water conflicts. He observes that the papers focus on select instances of

¹⁶ For an engaging narrative of her transition from the idea of water wars to how shared water resources generate cooperation, see Barnaby (2009). There are others who took more circuitous routes to reject the idea of water wars; for a useful discussion on *virtual water* (the idea of the nexus between food, water, and trade, and the embeddedness of water in larger trade and political relations) for understanding the absence of a rationale for water wars, see Allan (2003, 2005).

conflicts. He argues that the 'hydraulic imperative,' a theory often used to justify wars in the Middle East, is precisely the reason why the likelihood of war is limited. Water wars do not make strategic or pragmatic sense in modern times. In a typical situation of transboundary water sharing, the upstream state does not have to fight for water, whereas the downstream state cannot attack upstream installations for risks of flooding and pollution. In other words, wars fought exclusively over water have no winners.

This argument while so simple in negating water wars does not imply the complete absence of conflicts. Shared water resources are accompanied by conflicts of various degrees. In most instances of below-acute level (implying a descent into violence) of conflict, water is both 'irritant and unifier' (Giordano and Wolf 2003). Shared water resources are certainly an important source of contestations and disputations between the parties involved. "...[W]hile water wars may be a myth, the connection between water and political stability certainly is not" (Wolf 1998: 261). In other words, shared water resources do lead to contentious disputes, but rarely to a point leading to violent conflicts.

The TFDD is constantly updated and the OSU scholars regularly publish papers advancing historical understanding of international TWCs. A historical analysis of water conflicts over centuries shows that shared water resources are more often a source of cooperation than of conflict. A series of papers published a decade ago showed that the global record of water conflicts contrasts strongly with the number of sharing agreements over transboundary river water sources. In the past 50 years, there have been over 150 water treaties compared to 37 acute disputes. In the 37 acute conflicts, 30 conflicts involved Israel with its neighboring countries (Giordano and Wolf 2003; Wolf, Yoffe and Giordano 2003). Further, most of the time water was not the primary driver of conflicts; many other issues influenced their emergence and negotiation. A recent paper followed-up these conclusions to show that more

recently too, during 2000-2008, the trend of cooperation continued. But the nature of conflicts has changed; water quality issues drive conflicts more than scarcity or sharing-related issues (De Stephano et al 2010).

The body of work has also looked into what factors contributed to the remarkable record of cooperation over transboundary water resources. Three contributing factors for cooperation stand out: institutions, political relations, and geographic specificity.

Institutions are crucial, both *ex-ante* and *ex-post*, in sustaining cooperation and preventing recurrence or escalation of conflicts. They provide space for deliberations and participative collaboration. Similarly, cooperation among riparian states is likely to be greater when treaties exist, and lower in the absence of treaties (Giordano and Wolf 2003; Wolf, Yoffe and Giordano 2003). The importance of treaties and/or institutions outweighs other conventional factors contributing to water conflicts, such as water scarcity, climate change, demographic pressure, etc. *“The likelihood and intensity of dispute rises as the rate of change within a basin exceeds the institutional capacity to absorb that change”* (Wolf, Yoffe and Giordano 2003: 51, italics in original). Giordano and Wolf (2003) attribute the transboundary water cooperation record during the past 50 years to active global governance institutions and their associated knowledge bases. They refer to the evolution of legal principles for international water conflict resolution during this period, beginning from the Helsinki Rules of 1966 until the most recent Berlin Rules of 2004, including the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Convention).¹⁷

¹⁷ For a detailed history of evolution of these legal principles, see Salman (2007) and Chokkakula (2012). It is true that the codification of international customary law of water conflicts has helped. But this also has a flip

Political relations, the second factor, provide the necessary background and context for enabling the emergence of treaties or institutions. Existence of strong supportive relations forges cooperation. The politics of water are not exclusive or insulated from other politics; they are embedded in the larger frame of foreign policies and bilateral relations driving political relations of the nations involved. Political relations, often fluctuating over time, have direct implications over the manner in which water related issues are negotiated or operationalized (Wolf, Yoffe and Giordano 2003; Giordano and Wolf 2003; Mostert 2003). In South Asia too, larger political relations have always influenced water sharing arrangements. Indus water sharing between India and Pakistan, and other transboundary waters between India and Nepal as well as India and Bangladesh, have always been subjective to larger political relations between the countries (Salman and Uprety 2002).

The third factor relates to the contextual specificity of conflict or cooperation. Analysis of acute conflicts across the globe shows that the outcomes of water conflicts are specific to and contingent upon respective historical and geographic contexts (Giordano, Giordano and Wolf 2002; also, cf. Salman and Uprety 2002). The geographic context of the river, the historical development of river water resource development, and other contextual variables impact the sharing arrangements and the nature of cooperation. For instance, the Indus Treaty between India and Pakistan is typically representative of how history and geography matter in making it one of the resilient cooperation agreements in the world.¹⁸

side to it. It emphasizes far too much the legal principles rather than any institutional models for sustaining the cooperation arrangements.

¹⁸ For an interesting explanation along the lines of the 'geographic fix' that worked for the Indus Treaty, see Iyer (2007). While insisting that political relations played a major role, Iyer observes that the particular geographic organization of tributaries facilitated less complicated allocations between India and Pakistan.

Wolf's call for critically examining the water wars claims has led to a shift of focus from conflict to cooperation in transboundary water sharing studies. But this body of work has not been aimed at contributing to developing a theoretical framework for understanding transboundary water sharing. There is another stream of research developing simultaneously, an attempt at theorizing and evolving an analytical framework for TWCs. This approach emphasizes the process, of making and remaking TWCs, and employs critical methods for understanding TWCs. It focuses on the factor of political relations in Wolf's and others' work, and seeks to understand the nature and dynamics of political processes in the emergence or resolution of conflicts.

Some early contributions to this stream (Frey and Naff 1985, Frey 1993) call for exploring power relations between riparian nations to understand conflict and cooperation over transboundary water resources. The latter paper (1993) proposes a power analytical framework - analyzing power asymmetries and emergence of consequent politics – to predict conflict or cooperation over transboundary water resources. This body of work, known as the *interest-position-power matrix* framework, primarily argues that outcomes depend upon the relative strengths of interested (riparian) nation-states. The strength of a state derives from three factors: the *interest* of the state in the transboundary resource; the *position* of the state – whether upstream or downstream; and projectable power, understood as the military and strategic power to threaten and coerce other riparian states. In an elementary attempt to theorize, Frey and Naff (1985) argue that conflict is most likely when the overall weighted strength derived from these factors between riparian states is nearly equal. When the power gap is wide enough to exercise hegemonic influence over other state(s), there is unlikely to be any conflict over the resource (ibid., Lowi 1995). This predictive theory has apparently

proved robust in its application in the Middle East, with Israel holding hegemonic power and avoiding major conflict over water in the region (Zeitoun 2008).

Zeitoun and others build on these works to propose the hydro-hegemony framework (Zeitoun and Warner 2006).¹⁹ It posits greater emphasis on understanding power asymmetries and their workings in water conflicts (Zeitoun 2008). Inspired by other writings about how river basin management in general is essentially a political process (Wester and Warner 2002; Frey and Naff 1985; Warner, Wester and Bolding 2008), Zeitoun (2008) stresses the centrality of political processes and power asymmetries in understanding TWCs. Though not in particular the context of TWCs, Wester and Warner (2002) argue for recognizing that water management is essentially a political project, and call for a research that is "...conceptually grounded on the notion that water is a politically contested resource and that water management institutions and policies are effects of political practices" (p.71). The hydro-hegemony framework emphasizes this emphasis on politics and the workings of power, but has some key points of departure from these preceding works. It addresses the limitations of Frey's and others' power-analytical framework, namely (i) its lack of emphasis on methods for understanding how power works, and the restricted utility for prediction of conflicts; and (ii), it does not deal with water conflicts with no violence involved, yet exhibiting persisting tensions and contestations over water (Zeitoun 2008).

The hydro-hegemony framework related body of work is advanced by the London Water Research Group, which builds on international relations theories of power and securitization.

The premise is that existence of a treaty does not necessarily mean cooperation. There is

¹⁹ There are other useful works approaching water, power, and conflict from the perspective of environmental stress-induced conflict and violence, and the motivations for conflict - but these are not of immediate relevance to the discussion at hand. See, e.g., Homer-Dixon (1999).

always a propensity for conflict in transboundary water sharing, but the stronger power – the hydro-hegemon – mitigates this tendency by exercising its power, *hard* and *soft*, for producing compliance by the other power. This argument is an adaptation of Gramscian understanding of hegemonic power. It recognizes the contrapuntal co-existence of cooperation and conflict in transboundary water sharing spaces, along the lines of the OSU stream’s assertion that water is both ‘unifier and irritant’. Hydro-hegemony framework analysis attributes pre-eminence to power and draws on a variety of measures of the power of nations to show how a hydro-hegemon produces compliance even though conflicts occur (see for e.g., Zeitoun and Mirumachi 2008; Zeitoun, Mirumachi and Warner 2011; Zeitoun and Allan 2008; Mirumachi 2013). Conflicts occur with varying degrees of intensities, somewhere between the water wars and the oft-celebrated transboundary cooperation: “*the absence of war does not mean the absence of conflict*” (Zeitoun and Warner 2006: 437, italics in original). There is always a power play between competing riparian nations, not infrequently manifested as conflict, but with the outcome determined by the hydro-hegemon. Conflict and cooperation between transboundary water nations need to be seen as a political interaction, the nuances and impacts of which shape the outcomes (Zeitoun and Mirumachi 2008; Zeitoun, Mirumachi and Warner 2011). The coexistence of cooperation and conflict is part of these political interactions, and serve to advance the larger strategic interests between the nations.

This body of work is growing and refining with the advantage of regular contributions from the collective of scholars associated with the London Water Research Group (see for e.g., Mirumachi 2013, Cascao and Zeitoun 2010, Zeitoun and Allan 2008, Zeitoun 2007, Mustafa 2007). A brief debate in the journal *Political Geography* between the hydro-hegemony scholars (Warner and Zeitoun 2008) and a geographer (Furlong 2006, 2008) captures some of

the gaps and limitations. Furlong's (2006, 2008) first criticism centers on the 'territorial trap' of international relations theories where: (i) the state is treated as a fixed, secure, and sovereign space; (ii) the binary division of domestic from foreign; and, (iii) assumptions that the state preceded society.²⁰ Second, water cannot be depoliticized of its ecological conditions. For instance, a condition of water scarcity is often a manifestation of politics. The third concerns an area where the hydro-hegemony framework made some useful advances, and focuses on the manner in which the Gramscian model of hegemony is employed. It is projected and limited to interstate relation, but the larger hegemonic forces such as international institutions or norms are not adequately considered.

Furlong (2006, 2008) advocates deploying approaches from critical geopolitics, political ecology, and the social production of nature for addressing the limitations of the hydro-hegemony framework. That is, she calls for a transition from realist and structuralist approaches to post-structuralist epistemologies for understanding transboundary water conflicts. This is the precise endeavor of this study, and my research is located here in an effort to advance the scholarship about TWCs.

My research recognizes the perennial presence of conflict in transboundary water sharing spaces, as the hydro-hegemony framework suggests. But these power plays are not restricted to any fixed scale at a nation-state level; they are instead dynamic, multi-scalar, and spatial in nature. In Harvey's (1996: 263) words, the "place-space dialectic" of the remaking of transboundary political spaces and their topographies and counter-topographies are of interest here. The approach conceptualizes the transboundary political spaces as the outcome of relationally defined *processes*, contingent on various attributes: social (e.g., identity),

²⁰ See Agnew and Corbridge (1995) for an extended discussion of the 'territorial trap.'

political (e.g., strategic), and ecological (e.g., uncertain rainfall, flows). They are also multi-scalar with constantly shifting ‘power-geometry’ – where spatial relations are also power relations, and the shifting spatiality of transboundary waters leads to reorganization of power asymmetries (Massey 1993). The approach of this research also distinguishes from the excessive attention attributed exclusively to hegemon-driven politics, which limits the scope of analysis. It seeks to go beyond the Gramscian hegemonic power analytical frame to account for other possible power relations. More importantly, the hegemonic power approach neglects the power relations and asymmetries produced by political ecology - the spatial materialities of transboundary waters and their reciprocal exchanges in sharing.

Specifically, this study of interstate water disputes as a problem of transboundary politics seeks to make the following theoretical contributions.

One, it advances theorizing TWCs by addressing some unsettled limitations for Furlong (2006, 2008), particularly those associated with the application of hegemony to understand power asymmetries, and with respect to the ‘territorial trap.’ The analysis of power asymmetries shifts away from using the lens of hegemonic power. The analysis of power departs in two ways. First, the analysis of interstate water disputes does not begin with an understanding of hegemonic power relation between the disputing states. Instead, it seeks to understand and distil the sources of power asymmetries contributing to power plays and relations. Secondly, the hegemonic relation is also subject to the larger normative order - the federal context in interstate water disputes and the associated legal and institutional framework – a corollary to the normative order of the international customary law of water

conflicts, now in force through the UN Convention of 1998.²¹ This addresses the apparently ill-conceived assumption that the hegemonic power relation operates not only in isolation but also as an exclusive relation between party states.

The other advances in theory building are with respect to the ‘territorial trap.’ While transboundary water sharing in general is a statist project and restricted to the domains of statecraft, these negotiations are always subject to, and reflective of, internal political processes and external obligations. As I will show for interstate water disputes, the positioning and contestations of disputing states is often an outcome of internal political processes. There are several instances of similar multi-scalar processes influencing international water conflicts outcomes. The recently proposed treaty over Teesta waters between India and Bangladesh failed to take off for reasons associated with domestic politics in West Bengal, and also from within Bangladesh (Kumar 2013, Tiwary 2006). Another recent example: the state of Uttarakhand insisted on having a rehabilitation policy for the displaced in place before going ahead with the Pancheshwar transboundary power project between India and Nepal.²²

Recognition of these multi-scalar processes and their impact on transboundary water sharing addresses the two limitations of the triadic critique about territorial trap. In regards to the third critique about assuming prior status to state, instead of the other way around, my analysis of interstate water disputes indeed shows how such assumptions can be deeply fallacious and misinformed. The colonial history of India has had a deep impact in the way interstate water disputes manifest in India. The states are embedded in these histories and

²¹ The UN Convention came into force on 18 August 2014.

²² <http://indianexpress.com/article/india/india-others/uttarakhand-demands-rehab-policy-for-indo-nepal-pancheshwar-project/#.VCPbAPtOynA.email> accessed last on 5 October 2014.

embody deeper structural conditions that impact interstate water disputes and their outcomes (D'Souza 2006).

Two, studying interstate water disputes in India also enables advancing other bodies of work related to the political geography of boundary and scale, political ecology, and state and democracy in India. My research draws on these several streams of knowledge to conduct the proposed post-structuralist analysis, and advances these productively. They are discussed in greater detail in the next chapter. Briefly, the rich body of work on boundary and scale in political geography promotes a better understanding of 'scale-making, scale-jumping, and scale-fixing' in the emergence, recurrence, and mitigation of interstate water disputes. In turn, the deeply political processes involving identity politics can be productive in linking boundary construction, scale-making, and the (re)making of interstate water disputes. These are also useful in describing political processes and their impact on reproducing transboundary political spaces. The analysis builds on the body of political ecology to discuss how a range of spatial-material relations in transboundary water sharing arrangements reconfigure politics and power in TWCs. Further, as noted earlier, exploring the politics of interstate water disputes allows us to pursue a new dimension of state and democracy in India by focusing on state-state relations and the manner in which multi-scalar politics decenter the state in democratizing spaces in India.

Three, a significant outcome of this research concerns its public policy relevance in India with respect to policy making for the governance of interstate water sharing and dispute resolution in India. It also uncovers the critical nature of interstate coordination needed in the increasingly assertive and competitive states of India. It seeks to shift the focus to state-state relations for greater federal integrity in India.

1.4. Organization of the dissertation

This dissertation is organized into six chapters. Chapter 2 describes the problem of interstate water disputes in its very specific historical and geographic context. It also lays out the legal and institutional landscape of interstate water disputes and their resolution. Taking from this description, the chapter provides a review of the theoretical underpinnings of my research and analysis, and elaborates the streams of knowledge it seeks to build upon and engage with. Towards its end, the chapter discusses the research methods and methodologies used in the research. In Chapter 3, I pursue a genealogical analysis of the ‘curious case of exception’ – the bar on Supreme Court’s jurisdiction to discover its roots in colonial histories. This particular investigation helps to further emphasize the deeper structural and historical conditions – a different kind of postcolonial condition - within which the interstate water disputes in India are embedded. The chapter foregrounds the analysis of the empirical case study of the Krishna river water dispute between the states of Maharashtra, Karnataka, and AP.²³ The case study material is organized in the following Chapters 4 and 5. Chapter 4 probes into the historical (re)making of the Krishna dispute, with the benefit of the two tribunal awards, one in the 1970s and the other in the 2010s. It also shows how the particular political ecology of interstate water disputes, manifested as the permanent presence of conflict, enables politics and politically motivated contestations. This political ecology gives a sense of the kind of spatial materialities involved generally in TWCs to make a similar case for perennial conditions of conflict in international TWCs. Chapter 5 focuses on the

²³ Now bifurcated into the two states of Telangana and AP; but the dissertation predates this event and treats AP as a single state throughout the dissertation. The division also is not entirely complete; the new state of AP’s administration continues to operate from Hyderabad city, the capital of the united state of AP, now the capital of Telangana state. The reallocation of Krishna river waters between the two states is not yet decided. But as observed earlier, it is progressing towards another intractable interstate water dispute, with the two states *choosing* to dispute, requiring an extension of KWDT-II’s term and scope.

transboundary political spaces of Karnataka and AP – the two major and most actively contentious states in the dispute. It traces how particular historical and geographical factors contribute to perennial political contestations, often driven by politicized motives. It also suggests opportunities for deploying the politics for mitigating conflicts. Using insights and material from historical analysis and qualitative research, the chapter describes the transboundary politics, and the processes involved in their escalation and mitigation, to delineate the processes of scale-jumping and scale-fixing. Chapter 6 synthesizes the findings emerging from the previous chapters to discuss how the research contributes to the three streams of analysis as discussed above. It discusses the lessons learned from deploying the ‘anti-geopolitical eye’ to draw implications for theorizing TWCs more broadly, and specifically for informing public policy related interstate water disputes and their resolution in India.

Chapter 2: Interstate water disputes: the problem, theoretical tools, and methods

“I see political problem behind these things.... the politicians want to play with the nerve of the people to get more and more votes... otherwise, it is very easy to solve this problem.” - Ms Uma Bharati, Senior BJP Leader and, the current Union Minister for Water Resources, River Development and Ganga Rejuvenation, at a press conference during her visit to Chennai city in Tamil Nadu on 29 July 2012.²⁴ This was in response to questions about the BJP led government of Karnataka (GoK) state’s approach towards the Cauvery dispute, at a time when the dispute had escalated over Karnataka’s refusal/reluctance to release waters to Tamil Nadu during the dry season of 2012. The Congress-led UPA government was in power at the center while Tamil Nadu state was headed by the All India Anna Dravida Munnetra Kazhagam (AIADMK), a Tamil Nadu-based regional party. It was after this episode of escalation that the AIADMK demanded compensation of more than US\$410 million for Tamil Nadu’s agriculture losses incurred due to the delays in the release of water by Karnataka.

This episode symbolizes the increasingly political nature of interstate water disputes in India. The politics of interstate water disputes are not always about substantive issues, but can be subject to politicization. This is driven outwardly by the asymmetries of upstream and downstream requirements, and underscored by ecological uncertainties. But what are the structural, institutional, legal, or other factors, if any, contributing to such political theater and

²⁴ <http://www.ndtv.com/south/cauvery-issue-is-political-can-be-sorted-out-says-uma-bharti-494696> accessed on 29 July 2012.

the politicization of interstate water disputes? This is the question I seek to address while introducing the topic of interstate water disputes in India. I begin by discussing these disputes in greater detail before moving on to take advantage of this narrative to restate the central research questions of this endeavor in more specific terms, to define and justify the streams of knowledge and theoretical underpinnings I use as foundations for conceptualizing my inquiry and analytical frame. Towards the end of this chapter, I discuss the approach and methodology I have used for the research.

2.1. Interstate water disputes in India: the problem

Interstate water disputes are TWCs in their essence. They arise over shared rivers, where the rivers flow across state boundaries. The asymmetrical power relation between the upstream state and the downstream state is the primary defining characteristic of the conflict.²⁵ When a river flows across a boundary between states, the upstream state is usually at an advantage with its ability to appropriate water first.²⁶ In India, power relations between the states are compounded by histories of colonial rule and the post-independence reorganization of state boundaries. Before independence, several parts of India were sovereign independent states (princely states), while large territories were under British rule (presidencies). Thus, India's political geography is embodied with varied and hybrid state-sovereignty formations. There are other layers of asymmetry and complexity between these two broader categories of constituents. Water resource development is often uneven; British presidencies were predisposed to have had advanced irrigation development compared to the princely states.

²⁵ Compared to collective action problems around shared water resources such as lakes, transboundary (river) water conflicts are a distinct group of water conflicts where a power asymmetry induced by the upstream vs. downstream relation across a geographic boundary defines the core of conflict.

²⁶ A downstream state can also be at an advantage if it had an advanced appropriation history. The obligation to protect prior appropriation rights (in contrast to rights of first use of defined by spatial flow of the river, that of upstream users) is determined by the history of augmentation.

Further, water-sharing agreements under colonial rule were often biased in favor of British-ruled constituents owing to the subsidiary relation between the colonial power and the princely states. Under the terms of the unification of India, the constitution validates the pre-independence colonial agreements, carrying the prejudiced power relations and colonial asymmetries as deeper structural conditions into the post-colonial present of uneven political economy (D'Souza 2006, also Gregory 2004).

Shared rivers and changing boundaries: intertwined histories of territorial reorganization and power asymmetries

The Federal Democratic Republic of India – as the Indian Union is formally known - is not a federation in a strict sense. The anatomy is that of a union with a constitutional code inherited from the merger of British-ruled territories with about 700 princely states.²⁷ The Indian Union was founded by unifying these highly diverse and disparate geographic units. India mutated multiple times subsequently, which led to the further altering of boundaries between the constituent units. Indian states have therefore undergone reorganization of their boundaries more than once; the number of states in India has increased from 14 in 1956 to 29 now, with the latest 29th state of Telangana coming into existence very recently in 2014. This historical-geography of colonial power relations, pre-independence agreements, and post-independence reorganization complicates the anatomy and ongoing remaking of interstate water disputes in contemporary India.

²⁷ See extended notes on the number of princely states and their extent in Chapter 3.

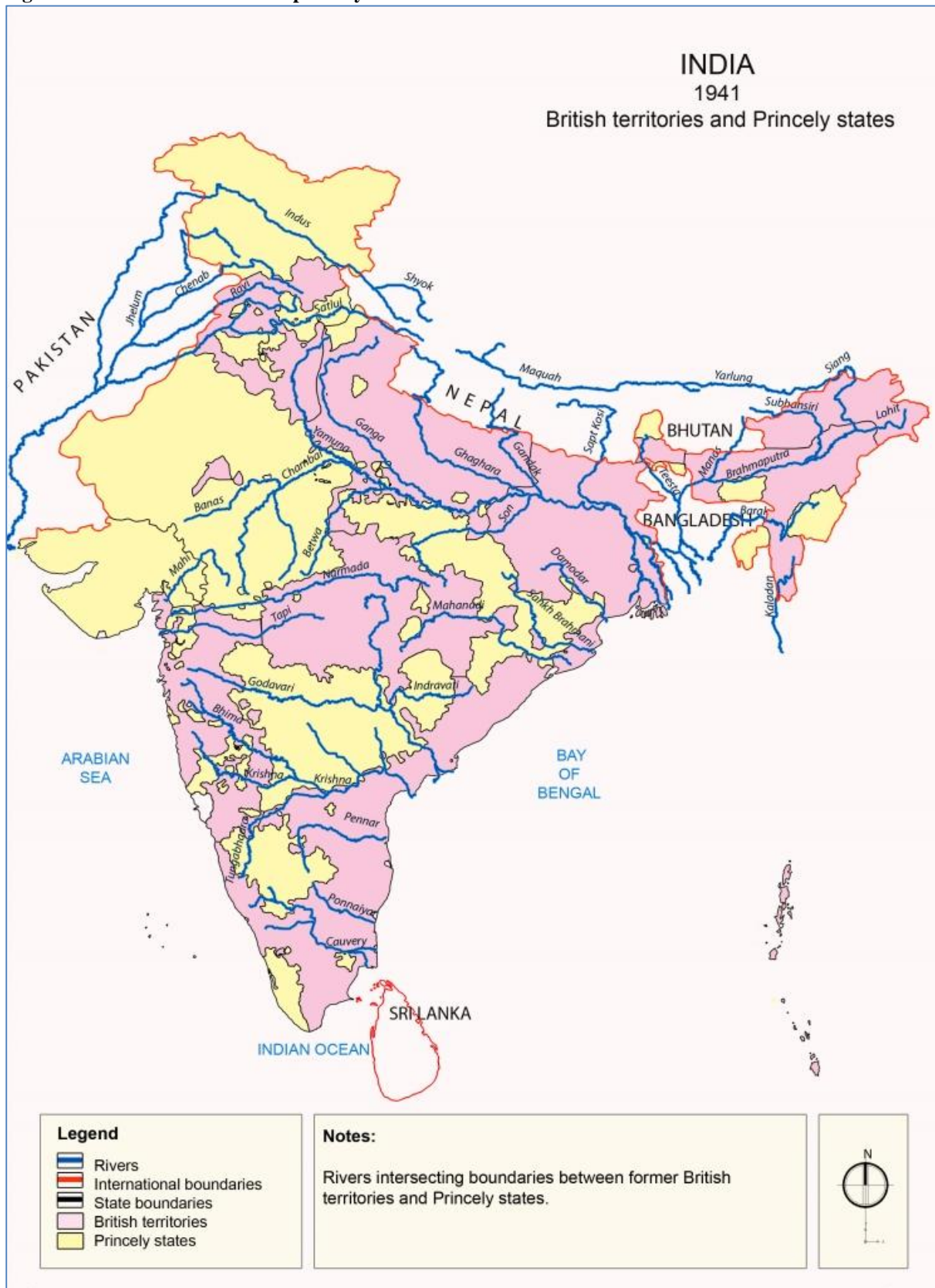
In order to better situate the subsequent analysis of interstate water disputes it is useful first of all to survey some of the official administrative remappings of the state boundaries – both to provide a heuristic geographic introduction to the complex and changing context, and with an interpretative view to highlighting how the national government has sought to encode and enframe the nation as a federal union by using administrative cartography. As Benedict Anderson (1991), Derek Gregory (1994), and Matt Sparke (2005) have all argued, such national enframing always works in part through imaginative geographies that work cartographically to suture nation and state together spatially in a way that draws on the epistemic authority of maps to secure the territory and meaning of the nation-state. At the same time, the fact that the nation-state has to produce new maps over time shows that the work of spatial enframing is never in fact complete. Even as it seeks to cover-over the ongoing ruptures and struggles over boundaries, it also records with its continuing changes the fact that the geography is unsettled and complexly contested. Here we will look at maps of India at several key historical junctures that are drawn from the Census of India's recent publication, *Administrative Atlas of India* (2011). Reworking the maps from this administrative atlas also helps to contextualize the hydro-geographies of India vis-à-vis the major rivers in India.²⁸ These maps are generated for the parts within the current political boundaries of India, for the purpose of this study and do not reflect the historically accurate boundaries at the corresponding times. Overlaying and adding notations to these maps makes it possible in turn to highlight some of the significant changes that have occurred over time. The first three maps, of 1941, 1951, and 1961 (Figures 2, 3, and 4) show the boundaries of

²⁸ The Central Water Commission (CWC) under the Ministry of Water Resources of the Government of India is the apex technical body with respect to water resources development in the country. CWC, in collaboration with the National Remote Sensing Centre of the Department of Space, has taken up an initiative to build a web-enabled water resources information system (WRIS). These maps draw on its recent publication, the *River Basin Atlas of India* published in 2012.

constituents overlaid by the rivers in the corresponding census years. The year 1941 had the most stabilized boundaries of British India following the Government of India Act of 1935 (GoIA 1935), the key precursor to independence. The map (Figure 2) shows the directly ruled British presidency territories as opposed to the indirectly ruled princely states territories, a simplistic representation of power asymmetries at the time. The 1951 map shows state boundaries immediately after the merging of princely states with the constituents of independent India (Figure 3). The 1961 map shows the boundaries after the first major reorganization of state boundaries in the Union of India on a linguistic homogeneity principle - following the recommendations of the first State Reorganization Committee report (1955) - and through the States Reorganization Act 1956 (Figure 4). The reorganization of boundaries continued through time, with the latest 2014 configuration shown in Figure 5. The last map shows the current 29 states with respect to their shared rivers and basins (Figure 6). These maps suggest how reorganizing the territories of constituents complicated their corresponding transboundary relations shaped by interstate rivers. The changing boundaries and shared rivers transformed transboundary spaces into complex political spaces of intertwined histories and power relations. Shared natural resources such as rivers were not a consideration in these processes of reorganizing boundaries and the consequent transforming political geographies.²⁹ Owing to this, the rivers' association with Indian states has remained problematic and susceptible to contestations.

²⁹ The States Reorganization Commission (1955) considered river management in one unique instance. In the case of delineating AP state in 1956, the Commission felt that there was an advantage in bringing the two basins of the Godavari and Krishna rivers under a single state's control. This was one of the reasons for Commission to recommend a unified AP state by merging the Andhra state and the Telangana region of the then Hyderabad state (p.101-109). Ironically, this logic did not survive the test of history and politics. Telangana became a separate state in June 2014.

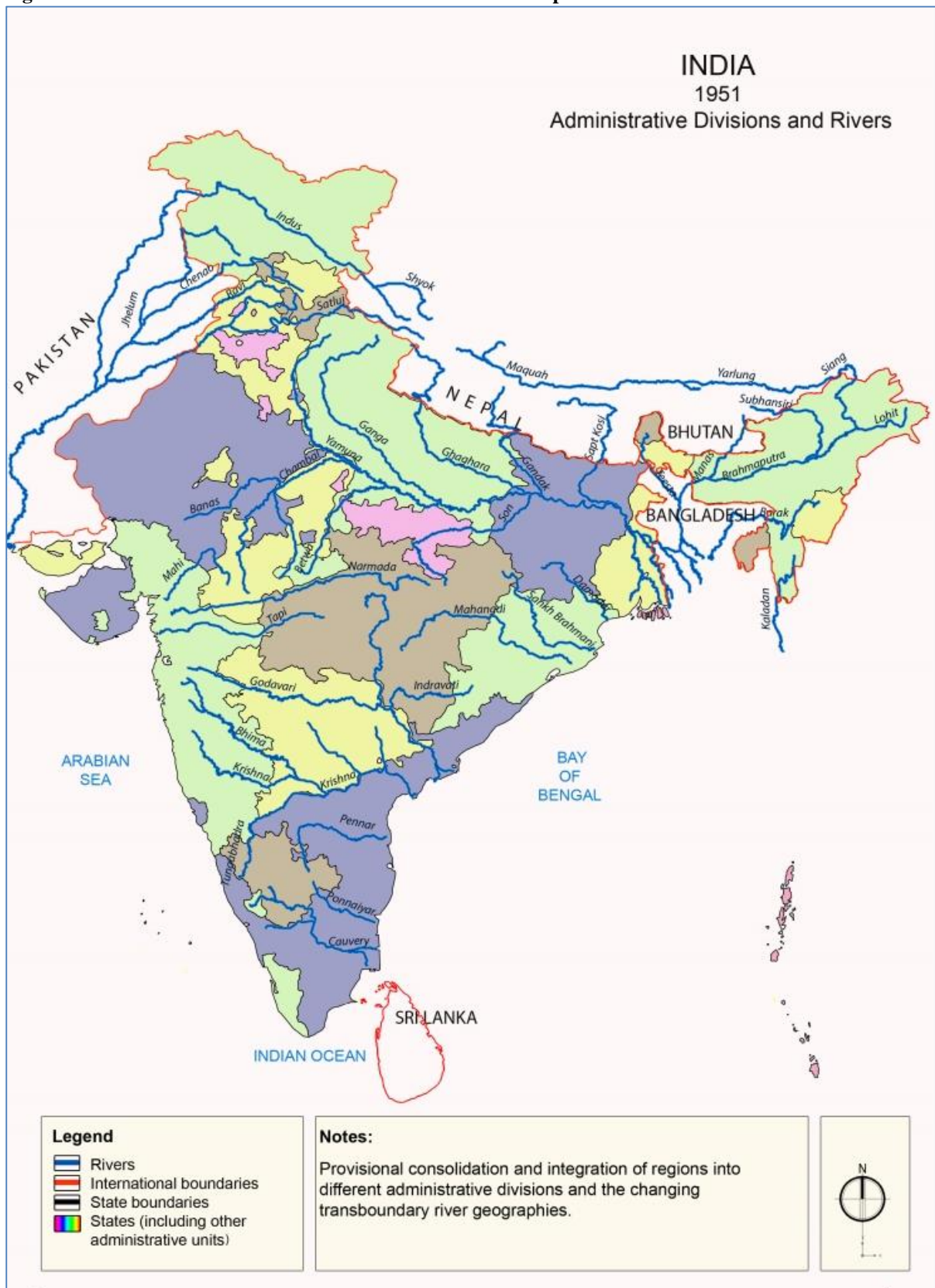
Figure 2 : British territories and princely states in 1941



Source: Regenerated and adapted from multiple sources: Census of India (2011) and India-WRIS (2012).

Note: The international boundaries shown here represent those overlaid on current boundaries of India to meet the needs of this study; they do not represent historically accurate boundaries of corresponding times.

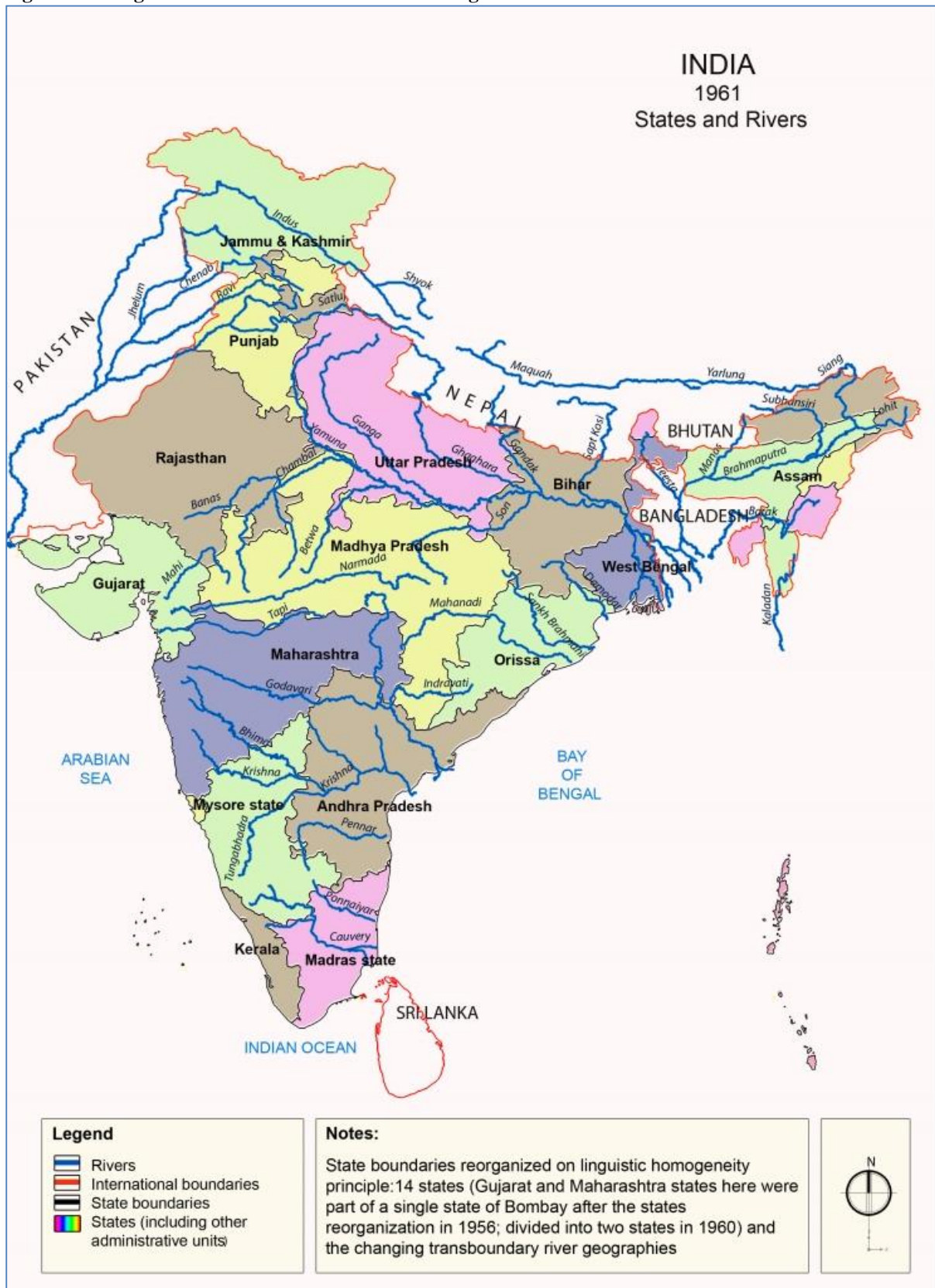
Figure 3: Unified India and administrative divisions after independence in 1951



Source: Regenerated and adapted from multiple sources: Census of India (2011) and India-WRIS (2012).

Note: The international boundaries shown here represent those overlaid on current boundaries of India to meet the needs of this study; they do not represent historically accurate boundaries of corresponding times

Figure 4: Reorganized states and boundaries on a linguistic basis in 1961



Source: Regenerated and adapted from multiple sources: Census of India (2011) and India-WRIS (2012).

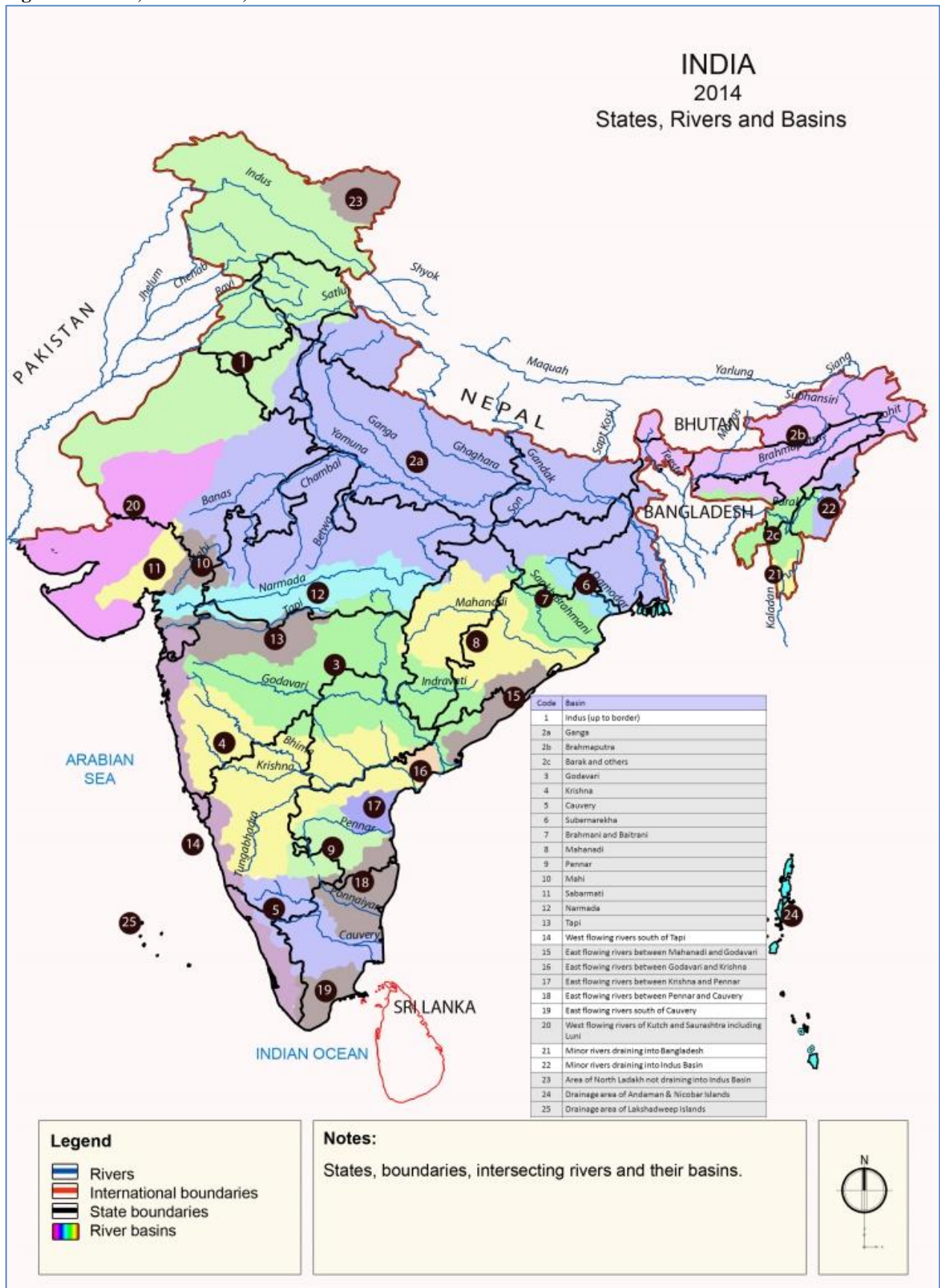
Note: The international boundaries shown here represent those overlaid on current boundaries of India to meet the needs of this study; they do not represent historically accurate boundaries of corresponding times

Figure 5: States, boundaries and interstate rivers in 2014



Source: Regenerated and adapted from multiple sources: Census of India (2011) and India-WRIS (2012).

Figure 6: States, boundaries, interstate rivers and basins in 2014



Source: Regenerated and adapted from multiple sources: Census of India (2011) and India-WRIS (2012).

Policy delimitations and institutional deformities: law and governance for interstate river development and dispute resolution

The complexities of Indian interstate water disputes are not restricted to the historical political geographies. The policy and institutional context for developing interstate rivers and for resolution of interstate river water disputes suffers from serious policy delimitations and institutional deformities. The mainstream discourse and debates are usually about these limitations and constraints.

The Interstate (River) Water Disputes Act of 1956 (IRWDA 1956) guides the resolution of interstate water disputes. The act provides for constituting independent tribunals by the federal government (central government, the Government of India – GoI, or the center) for resolving the disputes, after GoI's mediations fail. The IRWDA 1956 also bars the jurisdiction of any court, including the Supreme Court (the federal court, and the highest judicial institution in the country), drawing on the provisions of Article 262 in the constitution. As per the act, the tribunals' decisions (awards) carry the same force as that of a Supreme Court decree; they are final and cannot be appealed further.

The arrangements have not been very effective. The dispute mechanisms are generally considered opaque and ambiguous, allowing continued disagreements; and inadequately defined laws, policies, and institutions contribute to the emergence and recurrence of disputes (Richards and Singh 2002). The ineffectiveness is materialized in a number of ways, including, most notably: (i) long delays in adjudication and delivery of awards; (ii) noncompliance of awards by the states; and (iii), ambiguities in executing and implementing the awards. These issues have attracted extensive debates, often legalist in nature, resulting in several amendments to the IRWDA 1956 – which have not helped either.

Though interstate water disputes attract tremendous attention in mainstream politics and discourse, scholarly work is limited and restricted to esoteric groups, predominantly belonging to the discipline of law. It is partly due to this deeply legalist discourse that there are very few scholars who have produced a consistent and credible body of work about interstate water disputes. Notwithstanding this more general lack of research and scholarship, the work of two particular scholars stands out as a valuable exception. Ramaswamy Iyer and Radha D'Souza provide an invaluable starting point for other studies, including this one. Iyer is a former Secretary, Ministry of Water Resources (MoWR), from the GoI. Radha D'Souza, a lawyer by training, completed her doctoral dissertation on interstate water disputes at a department of geography. In a recent book, Iyer (2009) allocates substantial space for interstate water disputes. The book remains centered on laws – the theme of the book – but provides a comprehensive synthesis of the understanding about interstate water disputes so far.

Overall, scholarly works in the subject can be organized under three interrelated themes: (i) the ambiguities associated with law are attributed to ill-defined articulation of legislative responsibilities between the federal (Center) and the states; (ii) the legislation related to interstate water river development and disputes are poorly conceived and ineffective; and (iii), the contingent nature of these laws on the historical and structural conditions of Indian federation. I review these themes briefly here.

The division of legislative responsibilities under the constitution allocates water to the states. The Seventh Schedule under Article 246 prescribes these legislative responsibilities under three lists: Union List, Concurrent List, and State List. The parliament has exclusive powers to make laws affecting subject matters in the Union List while the states have powers with

respect to the matters in the State List. The Concurrent List includes subject matters where both Union (center) and states can make laws.

Entry 17 under the State list is: “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.” The powers of states under this, and the consequent lack of uniform policy and synergy between states, is considered a reason for the emergence and recurrence of interstate water disputes. One of the popular arguments is to shift water to the Union List for achieving the necessary synergy. Entry 17 of the State List however is subject to the Entry 56 of the Union List, which states: “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.” The Center never exercised its powers under the Entry 56; this ‘willful’ abdication by the Center led to an understanding that the states have exclusive power to manage water resources (Iyer 1994, 2002). Besides, there are other entries under Union List and Concurrent List that can be used by the center to exercise control over the water resources (Iyer 2002). It does not require shifting water to the Union List. Also, such a shift may have a destabilizing impact on federal relations from other functions related to water resource management.

The second theme concerns the poor conception and ineffectiveness of extant legislation for interstate rivers. There are two laws directly relevant to interstate rivers: the IRWDA 1956 and the River Boards Act 1956 (RBA 1956). Both these acts were introduced along with the States Reorganization Act of 1956. The RBA 1956 was in compliance with the responsibility under Entry 56 of the Union List, for regulation and development of interstate rivers. The IRWDA 1956 was pursuant to Article 262 of the constitution, which entrusts the parliament to make necessary laws to adjudicate disputes between states over interstate waters.

RBA 1956 enables setting up of river boards by the government to regulate and develop interstate rivers and valleys. The act however restricts the boards to an advisory role when it comes to influencing states.³⁰ In case of any difference between states over the advice of boards, judicial arbitration can be resorted to. This is redundant, for the act puts no obligations on states for implementing the decisions of boards. Thus, boards remain restricted to technical functions; they are often set up to implement or manage specific projects (Chitale 1992, SANDRP 1999). The National Commission for Review of Working of Constitution (NCRWC) termed the RBA 1956 a “dead letter” and recommended repealing it, calling for a more comprehensive legislation (NCRWC 2002). This limited advisory role of Boards is puzzling in the absence of other institutions having a similar function of interstate river development coordination. Nariman (2009) locates this fallacy in the historical context of drafting the act. The Indian state in its early stages with strong center and subservient states could have led to the assumption that central institutions would be effective even if they were advisory. Indeed, the Indian state transformed from a centralized one to a more decentralized one owing to emergence of strong regional powers beginning in the 1980s (Rudolph and Rudolph 1987). The trajectory continued due to increasingly coalitional nature of politics beginning in late 1980s, as well as the wider influence of neoliberal reforms emphasizing decentralization and subsidiarity (e.g., see Mazumdar 2012, Chakrabarty 2006; for more nuanced discussion, see Kohli 1990). This certainly has had an impact on the effectiveness of these legislations. It is pertinent to recall that both the RBA1956 and the IRWDA 1956 were conceived in the same historical moment as that of reorganization of states - via the States Reorganization Act of 1956 (D’Souza 2009). This contextual link cannot be ignored.

³⁰ River Boards Act 1956, Section 2. “It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation and development of inter-state rivers and river valleys to the extent hereinafter provided.”

The ineffectiveness of IRWDA 1956 resolution mechanisms also stems from other functional inadequacies and inefficiencies. Retired Supreme Court judges head the tribunals, usually with no specified procedures. The deliberations take place when the judge decides to have them, in degenerated forms of adversarial procedures of courts, contrary to the inceptive spirit and conceptions of deliberative functioning of tribunals (Nariman 2009).

However, noncompliance of tribunal awards by the states is a greater challenge alluding to a deeper structural conundrum associated with the federal structure and relations of the Indian state. Compliance and cooperation by states suffer from acute institutional deficits for implementing awards as well as arresting recurrences of disputes (Chokkakula 2014, also see Iyer 2002). The most illustrative and revealing instances are the constitutional crises created by the Cauvery dispute and Ravi-Beas disputes.³¹ In such cases, the GoI has to rely on exigency measures involving the Supreme Court and the President of India. Much of this governance deficit can be attributed to the constitutional ambiguities discussed by the recent most tribunal award, the Cauvery Water Disputes Tribunal (CWDT). As a prelude to its recommendation for constituting a Cauvery Management Board (CMB) for implementing its award, the CWDT deliberated over the ambiguities about whether it can, or should, suggest implementation mechanisms (CWDT 2007 – *Volume V, pages 216-223*). These ambiguities are largely rooted in the constitutional provisions under Article 262 that bars the Supreme

³¹ In 1991, both the GoK's houses of legislature passed an ordinance cancelling an interim relief order of the CWDT, forcing the GoI to refer the matter to the Supreme Court. The GoK too moved the Supreme Court against the tribunal; the Supreme Court eventually ruled the ordinance unconstitutional (see Chokkakula 2012). In an instance of a similar nature, in 2004, the Punjab Assembly passed a unilateral resolution annulling all past sharing agreements with Haryana and Rajasthan. Subsequently the Supreme Court had to intervene. But the matter has to yet reach a final settlement before the Ravi-Beas tribunal, constituted for adjudicating water sharing between Punjab and Haryana (see Iyer 2004, Padhiari and Ballabh 2008).

Court's jurisdiction over interstate water disputes. All these ambiguity-inducing provisions can be traced back to the genealogy of state-making in India.³²

These links between state-making and constitutional ambiguities in interstate water disputes resolution provide the right segue for the third theme located in the broader historical political context of the evolving Indian state. There is an extensive body of critical studies on the postcolonial condition and state-making in India (including the most popular and visible subaltern studies tradition), but not from a perspective of shared natural resources - as in interstate water disputes. Radha D'Souza's work stands out as the lone contribution in this space. D'Souza (2006) argues that interstate water disputes are a manifestation of reproducing colonial and imperial power relations in postcolonial India, embedded as deeper structural condition.³³ She (2009: 62) explains why water has to be necessarily a state subject matter. The Indian constitution is a compromise document out of negotiations between many stakeholders and social forces during the formative stages of the Indian state. Large number of princely states acceded to the Indian Union on conditions and expectations of a certain amount of autonomy. Since many of these states were primarily agrarian economies, they refused to part with regulatory powers over water, and give away to an uncertain and remote federal government. Thus, water as a state subject was a necessary arrangement in the unification process. Though somewhat speculative and not substantiated with evidence, it is a compelling argument, and as such it is one that the research for this dissertation seeks to advance.

³² The next chapter traces the roots to power relations during colonial rule and politics of state-making before and after India's independence.

³³ D'Souza focuses on the Krishna dispute, the same case of interest in this dissertation. In the latter chapters, her specific arguments will be discussed closely. Some key aspects of state-making and their implications for understanding interstate water disputes - not adequately addressed by her - receive comprehensive examination in this dissertation.

D'Souza (2009) also asserts that politics and power relations during colonial rule contributed to provisions of barring courts' jurisdiction under Article 262. As 'quasi-sovereign' entities in the Indian federation, states cannot be treated as any other entities involved in property disputes. This assertion is not entirely true as will be seen in later chapters; yet this historical context is an exciting area for understanding the politics of this 'curious case of exception.' In the absence of substantive evidence, these insights remain ignored and unexplored. And instead, the debates around the issue remain excessively legalist (Chokkakula 2012). In Iyer's (2009) edited volume, the issue of whether and why the Supreme Court violated the provisions of jurisdictional bar has been explored (D'Souza 2009, Sankaran 2009). But these works steered away from the critical questions concerning the rationale for keeping disputes out of the Supreme Court's jurisdiction – which then leads to the ambiguities and stalemates in the implementation of awards. This evasion is baffling especially as it flies in face of strong voices in favor of extending the Supreme Court's jurisdiction to interstate water disputes (Nariman 2009).³⁴

This myopia does not appear to be limited to such historical questions. Scholarship remains generally evasive about the politics and politicization of interstate water disputes more generally. Not that it remains unrecognized; most scholars lament the fact that politics and politicization hamper the resolution of disputes (see e.g., Benjamin 1971, Iyer 2004, Janakarajan 2009, Padhiari and Ballabh 2008, Richards and Singh 2002). Yet these are simply labeled as undesirables, and the debates remain obsessed with legalist responses (Chokkakula 2012). The politics of interstate water disputes play out across a range of issues,

³⁴ Fali Nariman is a highly respected Supreme Court lawyer and an authority on constitutional law. He has extensive experience with interstate water disputes, beginning from the first ever tribunal set up, the Bachawat tribunal, until the recent and ongoing Brijesh Kumar tribunal (KWDT-II).

from contestations over substantive questions of sharing and allocation to politicization for political objectives through mobilization of identity politics over ethnic, social, cultural, and political boundaries and associations (Chokkakula 2012, 2014, also see Pani 2013). The complex nexus between electoral politics (more specifically ‘vote bank’ politics) and the politics of interstate water disputes have not been adequately unraveled, even though this nexus is acknowledged often. For example, writing when Punjab’s unilateral annulment of water sharing led to a constitutional crisis, Iyer observes: “[I]t has been clear from the start that what we are witnessing in Punjab is as much a political game as a water dispute” (Iyer 2004: 3435). Similarly Fali Nariman (2009:34) held: “[M]y experience is that none of the political parties in any of the complainant or contesting States (in inter-State water disputes) is ever willing to concede a single point to the other State ...” During a more recent recurrence of the Cauvery dispute, Uma Bharati’s reactions cited at the beginning of the chapter echoes these assessments.

Yet, the scholarship avoids engaging this crucial element of politics in shaping the disputes and their outcomes. My research addresses this major gap by analyzing the politics of interstate water disputes. These politics are enabled by the ‘power-laden’ ecological conditions of water – the upstream and downstream power relations, the seasonal uncertainties of water availability, conditions of scarcity etc. (Robbins 2004, 2011; Furlong 2006). The dissertation also uncovers and reveals the intricate political ecology of interstate water disputes, and transboundary river water conflicts generally. As Taylor (1997) argues, political ecology has to be discerned as intersecting processes across multiple spatial and temporal scales. The recognition of this mutually constitutive intersection of politics and ecology allows us to engage with the problem of interstate water disputes in a more

productive way. These multi-scalar processes cannot be restricted to a particular set of scalar hierarchies, but have to be defined by political relational processes (Marston 2000).

2.2. Reframing the problem

With the backdrop of the above description of the problem of interstate water disputes in India, it is useful to revisit the objectives of the current inquiry in more specific terms.

First, following the earlier Chapter 1's discussion about theorizing transboundary water conflicts, the dissertation seeks to pursue and apply post-structural and critical approaches to bring power and politics at the center of analysis for understanding and theorizing transboundary water conflicts. It does so by studying interstate water disputes in India.

The second objective is to delineate the political ecology of interstate water disputes in India - the multilayered politics and power relations shaping the outcomes of the disputes - to explain and discuss the emergence, recurrence and mitigation of interstate water disputes.

Third, the research aims to uncover the deeply entrenched relational nexus between interstate water disputes and democratic politics, and describe how this relation is transforming the disputes and democratic spaces in India.

Fourth, it sets the goal of understanding about of the transforming state and federal relations in India through the lens of shared water resources. Federalism in India is often defined by center-state relations; this research seeks to discuss Indian federalism from a perspective of competitive state relations.

And finally, the inquiry aims to use the lessons learned to discuss the implications of interstate water disputes resolution for public policy in India.

To pursue these objectives, I have identified the following three streams of knowledge to build on and engage with: the political geography of boundaries, scale, and conflict to engage with the element of political mobilization in constructing and escalating conflict around geographically and socially constructed boundaries (identity politics); political ecology to build on the rich traditions of radical geography; and South Asia studies to understand the deeper postcolonial structural conditions embedded in interstate water disputes as well as the historical and geographical specificities of state-making and democratization in India. In the sections below, I briefly elaborate these streams of knowledge relevant to my research.

2.2.1. The political geography of boundary, scale, and conflict

Boundaries are markers of spatial differentiation along fault lines of social, cultural, and political identity. Boundary, by implication, also involves reorganizing territory and power. Boundaries are "... geographically constitutive makers as well as markers of regulative power relations" (Sparke 2009: 55). Power relations accompanied by overlapping, interconnected, and intersecting boundaries create avenues for conflicts and contestations, and are contained through production of scale. Boundary construction and production of scale are mutually constitutive within a set of political opportunity structures. I seek to build on the literature related to boundary construction and production of scale from critical theory traditions of political geography in analyzing the emerging and recurring interstate water disputes in India.

Boundary studies for long time remained concerned with studies of international borders and frontiers. In a 1960s review article, Minghi (1963) shows that boundary studies in political geography were focused primarily on boundaries separating nation-states. Boundary studies have evolved since then, and recently have shown a marked increase in interest (see e.g.,

Newman 2003, 2006a, 2006b; Newman and Paasi 1998; Sparke 2006). In the introduction to *A Companion to Political Geography*, Agnew, Mitchell and Toal (2003) describe political geography as the study of “division and power because of the centrality of orders and borders” (p.2), and how these orders and borders are transformed by material processes.

‘Boundary’ is now a representation that delineates an order and denotes a difference.

Newman discusses this ontological shift in boundary studies to argue that boundaries are representations of ‘bounding processes’ (Newman 2003; Newman and Paasi 1998). The emphasis is on processes and relational linkages, entailing integration across scales. Newman categorizes the trends in boundary studies as the following: (i) boundaries delineated by transboundary spaces of flows in the globalized ‘borderless world’; (ii) recognition of sub-national boundaries, below international boundaries; (iii) boundaries constructed by identity politics, along social, cultural, and political markers; (iv) boundaries of exclusion and inclusion through narratives and discourses, defining ‘the other’ vs. ‘us’ or ‘inside’ vs. ‘outside’; and finally, (v) boundaries defined by spatial scale.

Newman’s (2003) categorizations are not exhaustive, and omit other categories offering profound insights into understanding the geographies of social reproduction. The recent epistemological interventions within geography itself – for instance, feminist radical geography traditions – insist on boundaries around gender and marginality (e.g., Nagar et al., 2002). These traditions are particularly important in understanding social reproduction outside of capitalist production (Mitchell, Marston, and Katz, 2003). Other critical geography traditions contribute to these categories of boundary constructions, and offer powerful analytical frames to understand ways of constructing ‘the other’ in these times of increasingly polarized and politicized identity politics. There are boundaries constructed by power accrued as the source of a narrative or construction. O’Tuathail’s (1996) geopolitics is a useful

framework to understand such constructions. These constructions also help in addressing marginality by emphasizing the subject's perspective, as in Barrett's (1987) propositions of positionality and subjective experience of difference felt by subjects, or as in Haraway's (1991) situated knowledge. These frameworks can be very effective in revealing the social and political transformations induced by the complex processes of globalization. In a study of migrant workers in Ecuador, Lawson (2002) analyzes the difference between the representations of migrants in urban areas and the experiential narratives of the migrants about concerning their identities and 'belongingness.' The migrants' narratives of exclusion and differentiation reveal their stronger regional attachments as opposed to their national affiliation. Their detachedness to globalization, the very process that reconstructs their identities, has implications for their political mobilization. These traditions also help deconstruct the dominant discourse of the globalization-driven 'borderless world.' In another example, Sparke's (2005, 2006a) studies of US-Mexico cross-border governance under NAFTA showcase how globalization forces restructure boundaries and reterritorialize spaces. The US-Mexico transborder free trade initiatives accompanied entirely different regulatory regimes, with newly defined class boundaries reorganized by the NEXUS 'fast lane' (trusted traveler) program. Thus, boundary studies are about understanding the changing orders, spatial reorganization, and reterritorialization of regulatory regimes – but seldom on their disappearance.

This evolving formulation of boundary as a marker of difference, and its emphasis on processes and relational links – involving reconfiguration of boundaries and reterritorialization of spaces - is appealing for understanding the conflicts and politics of contestation, especially in transboundary water conflicts. Neil Smith (1992) reinforces this with his exposition of an association with production of scale. For Smith, a boundary is a

marker of difference, and production of scale is essentially an outcome of politics negotiating the difference. The politics of transboundary water conflicts begin with negotiating the asymmetrical difference of upstream vs. downstream, overlaid by several other kinds of boundaries, marking differences and associated processes – the ‘geographic structure of social interactions,’ in Smith’s words.

But before discussing Smith’s thesis, the escalation of conflict and production of scale can be described in more realist terms. In a discussion about conflicts in democracies, Taylor and Flint (2003) build on Schattschneider’s (1960) thesis about the scope of such conflicts. The outcome of a conflict in democracies does not depend on the relative powers of the parties, but on their abilities to escalate the scope of the conflict by invoking their respective networks delineated by constructed boundaries and identities. The scale of the conflict then depends on their ability to redefine themselves as a group of ‘us’ opposed to ‘the other.’ This relational boundary defines the scale of a conflict. Taylor and Flint (2003) also deploy Massey’s (1993) *power-geometry of place* to explain this. For Massey, *place* has to be understood as a process that is historically and geographically constructed. Places are not simple enclosures with specific boundaries; but embedded in a variety of social processes extending beyond a physical boundary. The politics and power relations are also contingent to the *place’s* location in the larger constellation of space.

This foregrounding helps in appreciating Smith’s (1992) theory of production of scale better. Smith argues, drawing on Lefebvre’s ideas of *spaces of differences*:

The production of scale may be the most elemental differentiation of geographic space and it is every bit a social process. There is nothing ontologically given about the traditional division between home and locality, urban and regional, national and global scales. The differentiation of geographical scales establishes and is established through geographical structure of social interactions (Smith 1992: 73).

Smith advances his argument further using radical feminist geography perspectives to propose the thesis about production of scale. He relies on Barrett's (1987) positionality and experiential constructions of boundaries, and their variety of subject positions.³⁵

Consistent with metaphorical appropriation of space, the contest and negotiation between different subject positions implies a simultaneous judgment of identity as well as difference, a social judgment of identity and its positionality vis-à-vis 'others.' In other words, such a contest and negotiation already implies socially established boundaries of difference and sameness, albeit boundaries that are continually forged and reforged in social practice. This in turn implies a theory of production of scale. (Smith 1992: 74).

Thus, the escalation of conflict (or production of scale) is contingent on the difference, or the boundary over which power struggle occurs. The contestations and the power struggles define the dynamic of social production. It also follows that containing conflicts is temporary until another difference is animated; hence the production of scale is also temporary: "thus the scale of struggle and the struggle over scale are two sides of the same coin" (Smith 1992: 74).

Newstead, Reid and Sparke (2003) explain this temporary nature of politics in negotiation of difference and production of scale more explicitly and definitively: scale-jumping is "the

³⁵ Harvey (1996) describes these subject positionality based differences as those that "derive from an internalization of "multiple othernesses" within the self" (p.363).

temporary fixing of the territorial scope of particular modalities of power.” (p. 486, emphasis by italics mine). Furthermore, scale-jumping “... enables us to describe the moments at which boundaries are reconfigured and struggles rearticulated” (p.486). In the specific context of interstate water disputes, the asymmetries and differences in geographical, social, cultural, and political terms have to be negotiated regularly - which manifest in the emergence, recurrence, escalation, and mitigation of water conflicts. From this perspective, TWCs are essentially political processes of negotiating differences and boundaries.

Building on Smith’s (1992) early work, the temporary nature of scale-jumping and the limits to scale have been subjected to critical engagement (Marston 2000; Brenner 2001; Marston and Smith 2001). The scale-fixing is contingent to political opportunity structures available at a given particular time, claims Marston (2000). These political opportunity structures can be provided by the state as well as by non-state actors, i.e., formal practices of political mediation for cooperation, or political mobilization to affect redressal or responses, by the state to diffuse conflicts. The recurrence of disputes may be due to the absence of adequate and effective political opportunity structures.

2.2.2. Political ecology

Political ecology explores nature-society relations: “a confluence between ecologically rooted social science and the principles of political economy” (Peet and Watts 1993: 239). At the core is the relationship between power, policies, political economy, and environmental change (Greenberg and Park 1994). Its reorientation as nature-society relations is a more recent reinvention by radical geographers (Peet and Watts 1996). Its beginnings trace back to

the seminal work by Blaikie and Brookfield (1987) on land degradation in India.³⁶ They argued that land degradation is less an environmental problem, more a social problem.

Political ecology is now a social theory engaged in explaining the dialectics of development and environment covering a broad spectrum of social movements emerging from the tensions and contradictions of under-production crises (Peet and Watts 1993, 1996).

In a relatively short span of its evolution, political ecology's scope and horizon expanded widely. Depending on disciplines, approaches, and objectives, political ecology is described in several ways, and with different emphases on the various dimensions of resource use and environmental change. As Ronald Herring (2007) describes in his course on comparative political ecology at Cornell University, political ecology is the political economy of nature. Political ecology recognizes that the access, use, and ownership of resources are determined by political economy, configured by various forms of state, market, and civil society (Stern, Young and Druckman 1992; Robbins 2004). Environmental change is influenced by the social relations and dynamics of place and are not necessarily proximal to resources (Paulson, Gezon and Watts 2003). Moreover, political ecology research has to explore the political basis for environmental change and outcomes, as Bryant (1992, 1998) argued, in what he called *Third World Political Ecology* research.³⁷ This reiterated emphasis is on greater convergence and complementarity between political ecology and political geography, with increasing salience given to politics and political institutions in impacting nature and environmental outcomes (Robbins 2003). But this is neither unidirectional nor just about the impacts of political economic factors over environment or resource use (e.g. Bakker 2003); it focuses instead on multiscale asymmetries and inequities produced by environmental change

³⁶ See also Blaikie (1985).

³⁷ See also Bryant and Sinead (1997).

(Paulson, Gezon and Watts 2003, Robbins 2004, cf Swyngadouw 2007). These multiscalar dynamics “... can be understood only by analyzing the relationship of patterns of resource use [in response] to political-economic forces” (Grossman 1993: 348). There are others who stress the need to understand ecological principles as a necessary element of political ecology studies (Vayda and Walters 1999).

Geography has nurtured another prominent and exciting strand of political ecology research. Braun (2006) reviews this body of work focusing on representational politics and discourse analysis for understanding nature-society relations. He summarizes this body of work under three categories: (i) analysis of the social-ecology of global commodity chains; (ii) neoliberalism induced environmental impacts and implications for governance; and (iii), bio-capital centered trade-offs and associated global asymmetries. Postcolonial studies also contributed to this body of work. For instance, in what is called ‘buried epistemologies,’ Willems-Braun (1997) delineates how colonial categories and identities of nature and forests remain present in, and inform, neocolonial representations and practices about forests in British Columbia. In my work, I search for similar ‘buried’ or ‘drowned’ epistemologies to explain the colonial present of the Supreme Court’s jurisdictional bar over interstate water disputes in India, besides showing how the present asymmetries are a result of histories of colonial rule.

Another interesting study analyzes discourse and representations of forest for mobilizing urban preservationist resistance, conflicting with interests of those relying on forest resources for livelihoods (Rossiter 2004). D’Souza’s (2006), whose work I engage closely in this research, pursues a similar line of historical analysis to show how colonial and imperial power relations reproduce in interstate water disputes. She focuses on law to show how it

enables sustaining and reproducing asymmetrical relations between geo-historically constituted societies.

Neuman (2005) associates political ecology approaches with methods employed to understand ecological processes. For him, multiscale analysis is an essential element distinguishing political ecology from other approaches for understanding human-environment relations. Other methods employed in political ecology studies include political-economic analysis, ethnography, historical and discourse analysis, and ecological field studies. The ethnographic approach to political ecology emphasizes the political and cultural dynamics of environmental conflicts and deals with rights, responsibilities, and benefits over environmental resources.

This great diversity in political ecology research makes it difficult to delineate its contours. But multiscale, relationality, and power relations remain central to political ecology approaches. As Taylor (1997) observes, and echoed by Watts (2000) and Neuman (2005), political ecology research is too 'wild' and complex such that no method or approach can deal with it adequately and effectively. But we have to be conscious about differentiating unequal agents, discerning intersecting processes operating across different spatial and temporal scales, uncovering 'intermediate complexities' of key relational strands or categories, integrating material and discursive elements, and locating sites of intervention (Taylor 1997: 122-4). This may not sound very precise, but is helpful in implementing political ecology research, especially with the task at hand: understanding the political ecology of interstate water disputes, with the ecology of rivers contributing directly to the complexities around access, use, and ownership (rights, allocations etc.), and with material and discursive practices enabled and influenced by multiscale political processes.

In a useful critique of political ecology research trends in geography, Peet and Watts (2004) suggest some necessary future directions for research: (i) interrogate larger causal connections between capitalist production and environmental degradation; (ii) identify and analyze the political in ‘political ecology’ in the forms of resistance such as civic movements and party politics; (iii) stress the connections between processes and institutions in place; (iv) understand knowledge-production processes that produce institutionalized perceptions; and (v), interrogate established ecological principles to rethink political ecology.

This inquiry into interstate water disputes allows me to pursue some of these new directions. The ecological character and conditions of water in producing politics and inequities (Robbins 2011), power asymmetries, access, and ownership are brought back to the center of analysis. The politics beyond politics of access and rights to water, the multilayered multiscale politics - including electoral and party politics – are of crucial import for this inquiry. It also seeks to get a deeper sense of the links between the policies and how these are informed and shaped by colonial histories and power relations.

2.2.3. State-society, state-making, and South Asian studies

My research aims to understand the transforming Indian state – in particular the federal relations and democratic spaces - from the lens of interstate river water disputes. The perspective from a shared natural resource has not been adequately explored in the otherwise vast and vibrant body of literature related to state-society and state-making in South Asian studies. I discuss the related literature briefly to locate these interests and show how the research seeks to engage and advance with ongoing streams of knowledge.

India’s state and state-making literature is dominated by classical political economic analysis. Several works recognize the strong and centralized nature of the Indian state in its early

stages of evolution (e.g., Rudolph and Rudolph 1987; Brass 1990; Khilnani 1999). The post-independence modern state in India, led by Nehruvian socialist ideals and dirigiste policies, was considered a success story, for it was able to establish the idea of a nation-state which did not exist before independence (Khilnani 1999). The capitalist class at the time of independence was not dominant enough to hijack the state (Bardhan 2001). The dominant classes of industrialists, rich farmers, and an elite class of bureaucrats balanced each other while none could dominate the state (Bardhan 1984).³⁸ The state and its centralization consolidated over time.

India had gone through a crisis of governability in the 1970s and subsequent years, and showed signs of strains in the fledgling democracy: decay of political institutions and instability after Nehru, together with ethnic uprisings and poor political leadership (e.g. Rudolph and Rudolph 1987; Kohli 1988a, 1990). However, its resilience in overcoming these political strains has been celebrated as a success of India's democracy. The state's centralized nature was also perceived to have changed towards a more decentralized one due to strong grassroots political mobilization and the rise of coalitional politics (Kohli 2001; Corbridge and Harriss 2000).

India's unique federal nature has been an important factor in these analyses. The linguistic basis for the reorganization of states was considered a factor that preempted any secessionist tendencies among princely states (Manor 2001; Dasgupta 2001). The nature of multiple and fluid identities in Indian society "...prevents tension and conflict from building up along a

³⁸ The long-drawn freedom struggle is sustained due to values of universal suffrage and collective identity consolidated over time. The Indian state reflected these values and hence the choice of democratic regime. Going by Durkheim and Giddens (1986: 41), "Strictly speaking, the state is the very organ of social thought."

single fault line in the society” (Manor 2001: 82-83). Indira Gandhi’s abolition of the *zamindari* system, ostensibly a socialist drive though a vote bank tactic, has elided any possible reemergence of princely-state nationalism (Ibid.). Dasgupta (2001) attributes the elements of the strong federal democracy to the value-based political capital that was inherited as the legacy of the freedom struggle. A more recent account of federal stability in India poses questions around the reorganization of states in India (Kale 2007). But these are about addressing differences across the states, and less about secessionism or instability in a federal democracy.

These political-economy narratives, informed by Marxian and Weberian traditions, often treat the state as an autonomous actor distinct from society. These fail to account for its social production and cultural embeddedness (Steinmetz 1999). They assume western-originated states as ideal types and ignore cultural-specificities of state formation in other societies (Gupta 1995; Sharma and Gupta 2006). These narratives also reinforce the imperialism of categories of state and society with little attention to how they reproduce each other (Gupta 1995). The seminal contribution by Abrams (1988) has called for treating the state as not only a system (with its structural features of institutions and practices of governance) but also as an ideological project (one that provides an effect of coherence and legitimacy together with society). This notion of the state as an ideological project in the coevolution of state and society posed a challenge. How does state-society as a social formation mutually constitute and reproduce each other? Approaching the state as an idea produced culturally and as historically specific provides a useful framework for theorizing the state in postcolonial societies such as India.

The response has been to approach the state anthropologically (Fuller and Benei 2000, Sharma and Gupta 2006). In a compelling argument, Fuller and Harriss (2000) discuss the

potential of anthropological methods to understand the state in India. The transformed nature of the modern state in contemporary democratic India warrants understanding it and its routinization of authority through everyday structures and practices. Focusing on its practices and representations helps gain access to cultural specificities and ideological constructions (Gupta and Sharma 2006). Though recent, this body of work has attracted much attention, and there is a significant body of literature on India specifically (e.g., Brass 1997; Corbridge et al. 2005; Gupta 1995, 1998; Gupta and Sharma 2006; Ferguson and Gupta 2002; Harris-White 2003; Jeffrey 2000; Sharma and Gupta 2006; Tarlo 2001) and elsewhere.³⁹

This approach also enables exploring India's *developmental state*.⁴⁰ This is best discussed via Kaviraj's (1991) popular characterization of Indian state's "feet of vernacular clay." In its early stages, the Indian state consolidated not only because it lacked a strong ruling class but also because of the modern state's reliance on a strong bureaucracy (Kaviraj 1984). The state in India continued with the colonial structures of bureaucracy after independence and relied greatly on these structures for implementing development projects. But this implementation suffered from its "feet of vernacular clay." The concentration of power within the elite bureaucratic class around Nehru has led to a huge gap between them and the lowest-level functionaries of the state on the ground. As the state's development activities increased, the bureaucratic machinery became insufficient, and the state was forced to begin relying on functionaries recruited from vernacular spaces. This inadequately trained workforce combined with the linguistic gap – between English speaking elite bureaucrats and the vernacular functionaries – led to the "feet of vernacular clay," which sought to explain the

³⁹ For example, see Navaro-Yashin (2002) for a study of the state in Turkey.

⁴⁰ By developmental state, I refer to a state's obligations for development responsibilities. For Corbridge et al. (2005: 18), a developmental state is "[R]oughly, those agencies of state and governmental practices that are charged with improving or protecting the incomes, capabilities and legal rights of poorer people."

Indian state's failure to successfully implement development policies. The modernist policies of the bureaucratic elite were "...very low down the bureaucracy, they are reinterpreted beyond recognition" (Kaviraj 1991: 91).

This observation may reflect a conventional Weberian state-system frame in describing the Indian state.⁴¹ Yet, it alludes to the profound gap in understanding of the Indian state – the ideological and cultural specificities of the state generating the particular outcomes of the state, here the developmental state. In a way, this is the gap that the anthropological scholars aim to address. In a brilliant study of the anthropology of the state, Gupta (1995) focuses on corruption practices in India. He discusses the everyday encounters of people with lower-level state bureaucrats, and analyzes the imaginations and constructions of people from these encounters to make a forceful argument about state-society relations in India. He concludes that there cannot be a unitary of state; it is encountered and imagined at multiple scales, forms and constructions, and with multiple agendas. The conceptual apparatus of a distinct state divorced from society is untenable. The ideological project of state can only be revealed from the practices, constructions, and representations of the state in the public sphere. This echoes the other influential works that theorize state-society relations. Mitchell (1991, 1999) argues in favor of focusing on the elusive boundary line between state and society for theorizing the state. The path is to probe how the imaginary *line of difference* between state and society is reproduced. This *line* is context-specific, which Gupta (1995) stressed to be the culturally- and historically-specific nature of the state.

⁴¹ Kaviraj (2000) elaborates this frame of analysis to make useful observations about culture-specific production of alternative modernities in India. He argues that the colonial rule has not interfered with the cultural spheres of Indian society and the hybridization resulted in multiple modernities. A similar argument was pursued by Chatterjee (1993) in his assertion of multiplicities of fragmented resistances to the 'normalizing project' of a grand universal nationalist modernity narrative.

This tradition of anthropological approaches produced rich and diverse studies of the Indian state. Brass's (1997) study of law and order in Uttar Pradesh shows how state and society overlap through entangled power relations among the police, criminals, and politicians. Tarlo's (2001) ethnography in family planning record-keeping offices in Delhi reveals many untold stories about how the state was negotiated during the state emergency during the 1970s. In geography, Corbridge et al.'s (2005) *Seeing the state* studies the Indian developmental state - the myriad ways the state is sighted and how people contest, collaborate, and co-opt it to benefit from development projects. Jeffrey's (2000) study in Uttar Pradesh looks at how the rural elite co-opted the state by using social networks to gain access to local state positions. He contrasts these with democratic practices of representation to caution against these practices in entrenching existing social differences.⁴²

In an influential work in this tradition, Chatterjee (2004) proposed a useful conceptual apparatus of *political society*, distinct from civil society, as a result of often encountered tensions in capitalist democracies. This is due to the conflict between a sovereign state's obligations to treat all its subjects equally and its governmental obligations toward disadvantaged communities. Such conflict poses a challenge to a modern state. The populations resort to negotiating with the state over the terrain of *political society* – through a

⁴² This focus on everyday practices for theorizing the state and understanding its ideological project received a different kind of treatment in a recent contribution. Painter (2006) proposes to use Bakhtin inspired prosaics of the state - state as an effect or 'the stateness' as the object of analysis to approach theorizing state. He describes prosaics as the "affective, the non-rational, the non-cognitive and the practical in ways that distinguish it sharply from critical realist and structurationist accounts." (p.763). Painter argues that prosaics offer a better approach to appreciate the dialectic relations between the state and society, in contrast to the more dominant Foucauldian approaches that build upon disciplinary effects of the state.

variety of processes including contestation, resistance, collaboration, and cooptation. These processes shape the state and its imaginations within its society.⁴³

The politics of interstate water disputes play out in this arena of *political society*. The structural infirmities associated with interstate water disputes in India provoke politics of all kinds – power plays among political parties, political struggles for rights and allocations, their nexus with democratic (electoral) politics, etc. As Gupta (1995) observes, when policies and institutions are imperfect, political action is necessary and inevitable. These politics, both in the terrains of *political society* and *civil society* reproduce not only the state – as practices, representations, constructions and imaginations – but also the spaces of society, including the democratic spaces and relations. An important element of these politics is the normative location of these politics and their legitimacy. The politics of contestation or cooptation also include corruption, violence, and other similar practices, posing the danger of legitimizing them (personal communication, Partha Chatterjee).⁴⁴ These issues present the challenge of engaging with the much-celebrated spaces of democracy that help alleviate political strains in India (Kohli 2001; Corbridge and Harriss 2000). The crucial nature of, and manner in which the politics attempt to move away and decenter state, takes the analysis into spaces of radical democracy for eliciting differentiated and particular meanings of democracy (Barnett and Low 2004). The power politics between political parties in influencing the outcomes of interstate water disputes allows the understudied dimension of interstate contestation in shaping the federal nature of the Indian state.

⁴³ Harris-White's (2003) looks at similar politics to discuss constructions of a 'shadow state' in India.

⁴⁴ As Jeffrey (2000) argues in his analysis of the politics of state cooptation in Uttar Pradesh, politics can lead to entrenchment of existing differences.

The subject of state-society relations brings us back to the spatial metaphor of boundary and transboundary spaces. The transboundary spaces of state-society and transboundary politics between states are of central interest to my research. The transactions and negotiations over recurring transboundary differences define the character of transboundary political spaces. These repeated and everyday practices negotiating cross-boundary differences may be generating a 'democratic effect' akin to Mitchell's (1991) structural effect of state, and Sparke's (2005) quasi-transcendental state-effects in transborder spaces – the transnationalizing of state economies and the limits set by economic interdependencies in exercising sovereign powers. The conceptual apparatus can be usefully employed to discuss the impacts of reproducing transboundary relational spaces and how these contribute to the ideological project of state in India.

My research about interstate water disputes not only brings these streams together, but also informs and advances them in new ways. The transboundary nature of interstate water disputes needs an elaborated analytical frame of boundaries to make sense of the politics and politicization of interstate water disputes. The political ecology of transboundary water disputes enables going beyond the politics of power between the geographic entities, but also account for the politics of ecological conditions – for instance, those induced by asymmetry of upstream and downstream location (cf. Furlong 2006). My research goes beyond these politics and examines how party politics and other multiscale politics of contestation shape and impact interstate water disputes. This mutually constitutive and reproducing nature of politics and political ecology in interstate water disputes is reflected in the changing nature of interstate relations, and enable the analysis of changing state and democracy in India.

2.3. Methodology

The research I present here is based on both secondary sources analysis and field research spread over four years during 2010-2013. I was based at the Centre for Policy Research (CPR), a premier think tank engaged in public policy research based in New Delhi. I was working for CPR on their research projects, while simultaneously pursuing my research interests in the broader area of transboundary water conflicts, focusing on interstate water disputes. The research consisted primarily qualitative research – which I call ‘qualitative topographies’ – and involved mixed methods: analysis of archival and secondary source materials; observations in field settings (in the transboundary region along the Krishna river course between AP and Karnataka states); interactions in policy spaces (in Hyderabad, Bangalore, and New Delhi); 27 formal semi-structured interviews and several informal interactions with key informants actively engaged with interstate water disputes; participant observation while attending the KWDT-II proceedings; and, analysis of policy documents and media reportage about the Krishna dispute, my case study. My positioning at the CPR was strategic for it provided access to relevant key policy circles. Though fraught with delays and reluctant engagement, it provided the legitimacy I needed to interact on this sensitive subject. This was also helpful for my interactions with fellow scholars on the topic such as Ramaswamy Iyer, an honorary professor at CPR. Iyer has been the most visible and authoritative opinion-maker with consistent interests and a commendable body of work in the subject of interstate water disputes in India.⁴⁵

⁴⁵ As noted earlier, the topic attracted a handful of scholars with consistent research interests and respectable research output – among which Ramaswamy Iyer stands tall. Incidentally, his 2002 paper on uncertainties and difficulties within interstate water disputes inspired my research interests.

The research also builds on my own earlier professional work experience and networks in India over a decade before embarking on doctoral studies. My earlier professional work in urban and regional planning was useful in CPR's enthusiastic willingness to accommodate me on their projects related to urban governance. The association with CPR was also useful in providing access to government functionaries in the states of AP and Karnataka, and to the proceedings of KWDT-II. I had an opportunity to attend and observe the proceedings of the KWDT-II and interact with participants during the period from May 2012 till December 2013. My field visits to the transboundary region along the Krishna river course as well as several visits to Hyderabad and Bangalore, were supported by a CRE (Committee for Research and Exploration) grant from the NGS (National Geographic Society). CPR extended support for my other visits and research. My base in New Delhi provided useful proximity to policy debates surrounding the issue of interstate water disputes, and more broadly to water resource management policies in the country.

I focused my inquiry between the two states of Karnataka and AP. Interstate water disputes are treated with great secrecy by state governments. Each state government maintains an exclusive cell or department for interstate water disputes, with satellite cells/offices located in New Delhi. These cells are led by high profile technocrats with direct access to their respective Chief Ministers and the Ministers of Water Resources. These technocrats tend to display strong loyalty and 'nationalist' sentiments towards their state's interests. In one of my first visits to these departments, I was challenged by the chief of the department that even if I would bring a reference from the Prime Minister, he would not share information at the cost of his state's interests. But over time, I realized that it was just an outer veneer, maintained to avoid sharing information and potentially generating complications due to the political sensitivities associated with the subject. As a native of AP, I presumed I would be allowed -

if not welcomed – at these departments in AP without much difficulty. But contrary to my assumption, I was accommodated with greater generosity and amiability by the GoK’s cell for interstate water disputes. Over time, I was even allowed to attend the KWDT-II proceedings appended to their team, which greatly benefitted my perceptions and understanding of adjudication processes and proceedings. This access was made possible through a reference to the Cell by a high-level bureaucrat who appreciated the purpose of the research, certainly more so because of another reference from a senior colleague at the CPR.⁴⁶ The strategically located position at CPR also helped with other kinds of access too. For instance, the access to archival sources at the Parliament Library was supposed to be relatively open and easy. But it could always be made difficult by bureaucratic hurdles, especially for those who are associated with a foreign university. Association with CPR made it less challenging. This positioning also helped my access to high-profile lawyers and jurists engaging with the dispute.

It was also not easy to interact with research institutions with related interests, even though they work on the technical and legal issues of water conflicts. As I argue in the later chapters, even though everyone is aware of, and accepts the deeply political nature of the disputes, none want to include and/or engage with it as part of their framework of analysis. For instance, the International Water Management Institute (IWMI) – one of the premier and respected research institutions in the world on water-related issues and part of the CGIAR (Consultative Group of Institutions for Agricultural Research) - has an office on the campus of the ICRISAT (International Crops Research Institute for the Semi-Arid Tropics) campus in Hyderabad, AP. My initial interest was to be based at IWMI for completing my research. But

⁴⁶ Even though I was allowed to interact with their teams, I was always excluded from the conferences where the actual legal strategies of the state were discussed.

IWMI could not accommodate research on politics precisely for reasons associated with local political sensitivities, and the likely adverse impacts in their relations with the state and central governments. However, IWMI was supportive of my research and generously allowed access to its comprehensive information on Krishna basin studies.

My decision to work on the Krishna water dispute had a clear rationale. Besides the consideration that the dispute is the most frequently recurring and contentious dispute after the Cauvery dispute, there were particular logistical and convenience-related reasons. I am a native of AP and know the local language, Telugu. Kannada, spoken in Karnataka though different, is proximate to Telugu and shares similar script. The states' cultural proximity was also a helpful factor, and as the research progressed, it proved to be very much to my advantage considering the stakes, secrecy, hyperbolic pronouncements, and the consequent paranoia attached to interstate water-sharing related data, information, and other inputs.

Moreover, the Krishna dispute was one of the first to have had a Tribunal adjudicating it in the 1970s and also the first and the only one so far in Indian history to have had a Second Tribunal for adjudication. The KWDT-II gave its Final Award in 2010 and was conducting explanatory hearings (allowed under the IRWDA 1956 – also known as “Section 5(3) hearings” in legal parlance – towards its Further Report) during the period I was doing my research. This made a large amount of reliable data open and easily accessible via the tribunal awards documents and the documents presented before the tribunal. The two tribunal awards 30 years apart also allowed a useful comparison for my inquiry.

The methodology primarily involved three distinct techniques: secondary source and archival material analysis, field observations, and key informant interviews. Some initial findings in the course of my research had an impact in the manner I implemented these methods. First, I

had to expend substantially greater efforts in archival research and secondary source analysis compared to my initial anticipations. Second, the field observations component was initially modeled to be ethnographic in nature, but had to be modified in terms of its focus and design to allow allocation of my efforts across multiple sites of interest. Third, I planned to do up to 60 key informant interviews and had the number approved by the Institutional Review Board (IRB), but ultimately had to reduce this number. I discuss these modifications in more specific terms below, less for the reasons of explaining the modifications but more to discuss my lessons learned and to elaborate the methodology.

As I began my research on interstate water disputes, and over preliminary interactions with key informants, especially lawyers and policy makers, I repeatedly encountered the paradox of the ‘curious case of exception’ that prevents submission of interstate water disputes to the jurisdiction of Supreme Court. As I explained earlier, this almost assuredly directly contributes to dispute recurrences, extended litigations, and noncompliance in tribunal decisions. I wanted to understand this; my curiosity elevated when I realized that even the most informed on the subject – including highly experienced lawyers and jurists with recognized expertise and formal engagement with interstate water disputes adjudication – failed to provide a convincing explanation. The responses were mostly speculative and allusive, including those written by subject experts. For example, D’Souza (2009) argued, the bar “...was *precisely because* [interstate water] disputes between states cannot be equated to ordinary property disputes between citizens” (p.63: italics in original). This was not entirely accurate, but her allusion to the power relations at work in constitution making and the unification of India was a useful sign post in providing direction for my research efforts. This led me to investigate previously unexplored terrain concerning this exception to the Supreme Court’s original jurisdiction. I had to engage extensively with archival materials to

trace the source of the exception and explain the history of power relations that contributed to it. This research is presented in Chapter 3. This is not entirely an impulsive turn, but well within the ambit of my research plans to advance D'Souza's (2006) argument about how colonial and imperial power relations contributed to the emergence of interstate water disputes. The turn towards 'the curious case of exception' was primarily to explore the deeper structural conditions and advance the argument in unequivocal terms.

The field research component was informed by methods and techniques of multi-sited ethnography (Marcus 1998) or its adapted form of deterritorialized ethnography (Merry 2006, 2007). The plan was to carry out field research at different scales: local transboundary spaces – across the physical boundary and along the river course between AP and Karnataka; formal policy spaces – in policy spaces at the national and interstate levels where the formal adjudication occurs; and, informal political spaces – the amorphous and volatile political spaces where power struggles and political mobilization strategies - following Chatterjee's (2004) *political society* - play out. This categorization of spaces was entirely for logistical reasons and to organize my efforts. Overall, my goal was to engage with the fragmented transboundary political spaces of interstate water disputes following Merry's (2006) description of the deterritorialized ethnography of multiscale processes, engaging "...with the fragments of a larger system that recognizes that the system is neither coherent nor fully graspable...a disembodied space of social life, one that exists in various spaces but is not grounded in anyone of them" (p.29).

In my first two field visits to the local transboundary space – the transboundary region across the interstate boundary of AP and Karnataka, along the Krishna river's course - I gained two important insights from my interactions with communities and informants. These made me revisit the notions of transboundary space that I had posited when organizing my field

research. First, I presumed that the transboundary political space aligned with the physical boundary inscribed by the Krishna basin, implying that the region outside the basin boundary but within the two states was not part of the transboundary political space I intuitively delineated. This could not be less true. I realized that the entire space encompassed by the two states had to be part of the transboundary political space.⁴⁷ The administrative boundaries of the states are the boundaries along which people's identities are assumed to consolidate over time. These are the boundaries associated with sharing the Krishna's waters, not the physical boundary of the basin itself. For the tribunals too, as I discuss in Chapter 4, the physical boundary of the basin was not the consideration when making allocations for the states, rather the state boundaries were. The epistemic and political authority attributed to imaginary geographies inscribed by cartographic representations of formal law and modes of regulation has disrupted my other set of assumptions in delineating the local transboundary spaces along the river course across the interstate boundary. I had assumed that the uncertainties associated with interstate water disputes would be felt more strongly among the communities in proximity to the river, and I expected greater political engagement by these communities. I was not accurate with these assumptions. I found the proximal communities along the river's course across the boundary to be rather indifferent to the specific impacts of interstate water disputes on their lives. Instead, their differentiation of impacts was found to be similar to those away from the river. Along the lines of Lawson's (2002) findings with migrant workers in Ecuador, the communities' differentiated perceptions reflected a stronger sense of subnational attachments - as citizens of AP or Karnataka - and much less so of immediate impacts due to dispute-linked uncertainties. Rather, the perceptions of impacts are

⁴⁷ For this specific purpose of field research in the transboundary spaces of the two states, it includes the space delineated by the two states administrative boundaries. But at conceptual level, the transboundary political space for the dispute would also include Maharashtra state as well, which is a party to the dispute.

linked closely with their participation and engagement with organized political activities and institutions such as farmer associations and political parties. As an outcome of these initial findings, I decided not to put too much stress on conducting ethnography along the river course. Especially to retain my emphasis on the politics of contestation and mobilization and the implications for the disputes, I directed my efforts in interacting with organized political communities and their political strategies. I focused my field research in the coastal Andhra Pradesh districts, primarily those within the Krishna basin, where I closely engaged with activists, political party leaders and functionaries, farmer associations, and other key opinion makers involved in the Krishna dispute.

In the formal policy spaces, I observed and interacted with political leaders, bureaucrats, technocrats, and lawyers engaged specifically with the Krishna river water dispute – most of them located in the cities of New Delhi, Hyderabad, and Bangalore. This included several days when I attended the KWDT-II hearings. I was present within the ‘court room’ as well as outside during most days of the hearing from April 2012 until the explanatory hearings – the “Section 5(3) hearings” - formally ended in August 2013. The participants in the proceedings were primarily the legal and technical teams of the disputing states, as well as the various functionaries of the tribunal itself. These people were happy to interact with me informally and openly shared their thoughts, but it was always difficult to get them to agree to a formal interview. They were always conscious of the political sensitivities and often worried about misrepresentation and misconstruction of their views. It is understandable, for the vernacular press actively covered the tribunal proceedings. I used to follow the vernacular media in Telugu during tribunal proceedings, and I could understand their concerns considering the manner in which the proceedings were usually presented. The reporting and presentation were always in the frame of ‘us’ vs. ‘them’ (AP vs. the other states), and spent an inordinate

amount of time assessing how well or poorly the state government (the disputes team) was contesting the case. Such shallow reports often provided useful fodder for the opposition to attack the political party in power. Owing to these concerns, my potential informants would always avoid participating in formal interviews. Their reluctance was much more evident whenever I presented the IRB approved forms for their consent.

I found it puzzling how formal procedures such as IRB consent forms, ostensibly to protect the interests of the subjects, were met with visceral rejection even by the most informed. A Senior Advocate in the Supreme Court fighting on behalf of a state rejected providing consent, even though he was the person most capable to understand and assess the benefits/risks involved in giving consent. There were other easy grounds to reject as well: the matter was ‘sub-judice’ for the entire period of my research and any comment would be considered contempt of proceedings (court). Most respondents, even the most sympathetic and generous, found it easy to use this ground to refuse formal interviews. This was the case even when I wanted to discuss issues not relevant to the Krishna dispute, such as the exception of interstate water disputes to the Supreme Court’s jurisdiction. I approached the Chairman, Justice Brijesh Kumar and the members of the KWDT-II. They generously spent time discussing my research, its relevance, and the challenges associated with interstate water disputes in general. But they refused to participate in formal interviews until the Further Report was released.⁴⁸ The key informant interviews in the sites of formal policy spaces were conducted within these constraints; the final number of 27 key informant interviews (instead

⁴⁸ Justice Kumar expressed his own personal interest in exploring questions related to the jurisdictional bar on interstate water disputes, but expressed his inability in granting a formal interview while the tribunal proceedings were going on.

of the 60 I originally planned) was of those who provided their formal consent. Chapter 5 presents the findings from these interactions.

My interactions in the field and with informants were informed and inspired by traditions of feminist epistemologies, critical geopolitics, and critical ethnography. I sought to bring a careful self-reflexive sensitivity to positionality, power, and politics in all this research. The multiscalarity and fluidity of the relational linkages and political processes posed challenges in conducting structured field research. By focusing on spaces at different scales as described earlier – in transboundary regions of Krishna basin, in formal policy and institutional spaces of states and center, and in the multilayered spaces of *political society* where the political struggles over the Krishna dispute animate and materialize – my field research strove to describe the qualitative topographies of interstate water disputes. This may be qualified along the lines of various nuanced and applied interpretations of ethnography (including Burawoy 1998, 2001; Merry 2006, 2007; Herbert 2000). Critical scholarship responded with modified means of ethnographic approaches focusing on everyday practices and spatiality of governmentality for understanding interconnected and transjurisdictional processes in globalized world systems (see Ferguson and Gupta 2002, Hart 2004). The methods applied strove to remain conscious of the sensibilities and sensitivities espoused by the approaches, along the lines of Gillian Hart's (2001, 2002, 2004) critical ethnographies. Hart builds on Lefebvre's conception of space "...as actively produced through situated, embodied material practices, and their associated discourses and power relations" (Hart 2006: 994). In emphasizing the embodied practices and processes, both material and discursive, Hart emphasizes relational understanding in production of space and scale as central to implementing critical ethnographies, seeking "a processual and relational understanding [that] refuses to take as given discrete objects, identities, places and events; instead it [critical

ethnography] attends to how they are produced and changed in practice in relation to one another” (Hart 2004: 98). The objective was to produce a narrative of an ‘anti-geopolitical eye,’ an embodied view of transboundary political spaces of interstate water disputes.

In emphasizing practices, processes and representations on the ground, the research also draws on the Foucauldian approaches of genealogy, pursuing the question as Gordon (1980: 233) puts it: “what kind of political relevance can enquiries into our past have in making intelligible the ‘objective conditions’ of our social present, not only its visible crises and fissures but also the solidity of its unquestioned rationales?” This is the question I pursue when I look into the Supreme Court’s jurisdictional bar over interstate water disputes to elicit the historical conditions and power relations permeating the present discourse and practices.⁴⁹

Further, as Foucault explains:

I don’t believe the problem can be solved by historicizing the subject as posited by the phenomenologists, fabricating a subject that evolves through the course of history. One has to dispense with the constituent subject, to get rid of the subject itself, that’s to say, to arrive at an analysis which can account for the constitution of the subject within a historical framework. And this is what I would call genealogy, that is, a form of history which can account for the constitution of knowledges, discourses, domains of objects, etc. , without having to make reference to a subject which is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history (Foucault in Rabinow 1984: 59).

⁴⁹ I find the following interviews with, and essays about Foucault instructive on the method of genealogy: *Questions of Method* (Foucault 1991), *Governmentality* and other essays in Burchell, Gordon and Miller (1991); *Questions on Geography* in Foucault (1980); *Truth and Power* and *Nietzsche, genealogy, history* in Rabinow (1984).

The material practices, processes and representations are the focus of analysis. In what Foucault calls as analysis of ‘regimes of practices’ – “the target of analysis wasn’t ‘institutions’, ‘theories’, or ‘ideologies’, but *practices* – with the aim of grasping the conditions which make these acceptable at a given moment” (Foucault 1991: 75). The goal is to distil the complex and multiple historical processes of producing these practices; and understand “how forms of rationality inscribe themselves in practices or system of practices” (Foucault 1991: 79). I examine the practices inscribed by formal processes of adjudication of interstate water disputes to distil the forms of rationality enabling their legitimacy and acceptability.

Though power itself is central to the genealogy method, it does not adequately stress the spatiality of power, how spatial organization is inscribed with power relations - as in Massey’s power geometry of place (1993). This is a vital element in transboundary water conflicts, the asymmetrical power relation of upstream vs. downstream being the most fundamental form of it. This power geometry induced by spatial arrangement and defined by a flowing river in analyzing the spatiality of power in practices of interstate water sharing and disputes. The approach helps in engaging with popular theories of transboundary water conflicts such as the hydro-hegemony theory, that draws primarily on international relations literature (e.g. Zeitoun and Mirumachi 2008; Zeitoun, Mirumachi and Warner 2011; Zeitoun and Allan 2008). The limitations of Gramscian hegemony power analytical framework in addressing critical questions raised by Furlong (2006, 2008) around ‘territorial trap’ and ‘power-laden’ political ecologies in transboundary water conflicts are tested. The predominantly spatial political ecology of interstate water disputes and the myriad ways of power in transboundary water sharing necessitate going beyond hegemony. In an interesting paper, Ekers and Loftus (2008) elucidate the potential complementarities and resonances of

Gramscian and Foucauldian approaches in researching water-related issues by comprehensive engagement with techniques of power in subjectification practices and struggles for resistance and contestation.⁵⁰ They call for simultaneous engagement of Gramscian and Foucauldian analysis for a richer political ecology of water.

Informed by these perspectives, my qualitative topographies approach benefitted from a nuanced application of conventional ethnography to understand the changing globalized and integrated world systems, to “elucidate linkages between the macrological and the micrological, between the enduring and structured aspects of social life and the particulars of the everyday” (Herbert 2000: 554). Traditional ethnographies tend to ignore the structural or system level analyses and remain place-based cultural studies. These approaches are a response to overcome this limitation and study ‘world-system processes’: the processes and phenomenon that extend beyond specific sites. The goal is to trace the trajectory of processes and interconnections of a phenomenon (Marcus 1998). It is designed around chains, paths, threads, conjunctions, or juxtapositions of locations for tracing a cultural formation across and within multiple sites of activity that destabilize the distinction, for example, between lifeworld and system (p.80). These methods have been successfully used in variety of settings. In her deterritorialized ethnography, Merry (2006, 2007) explores spaces of discourses about human rights and gender violence and locates these spaces in transnational conference spaces and select national spaces of policy debates where NGOs, academics, activists, and legal personnel participate. Coutin (2007) argues that her continuous policy engagement with issues of Salvadoran immigrants in the US even after she left the field

⁵⁰ Also see Montag (1995) for a more comprehensive discussion of resonances and complementarities of Foucault’s work on power and the Althusser’s exposition of Marxian notions of ideology and ideological apparatus.

should be considered ethnography. Burawoy's (1998, 2001) global ethnography traces globalization as an experience of supranational forces that then constitute the local, as an experience of transnational connections and as an ideological experience contesting globalization as a nation.

These approaches inform my qualitative topographies procedures to elicit and produce a "thick description" (Geertz 1973) of differences, boundary making, and forms of power shaping the particular political ecology of interstate water disputes and associated transboundary political spaces. I use the narratives of subjects, the participants in the politics of interstate water disputes as part of "thick description," drawing inspiration from the traditions of feminist epistemologies. Haraway's (1991) thesis about *situated knowledge* is central to these approaches, and all of what is offered in what follows must be seen as at once, situated, partial, and powerful in the senses Haraway articulated. After all, she argues, "only partial perspective promises objective vision" (p.190). Using narratives of key political actors active at multiple scales within the transboundary spaces of the Krishna dispute, I discuss their geopolitical imaginations, along the lines of Megoran's (2006) 'political geographical imaginations,' contributing to a partial, but I trust still compelling, picture of the emergence and recurrence of interstate water disputes in India.⁵¹

⁵¹ Megoran's (2006) 'political geographical imaginations' are the "way in which people experience, conceive of, or desire a particular configuration of the relationship between space, ethnicity, nation and political community" (p.623). He too uses ethnography methods and narratives of subjects in the Uzbekistan-Kyrgyzstan Ferghana valley boundary to discuss the traumatic effects of separation. Geopolitics literature uses the expression 'geopolitical imaginations' extensively. Agnew (1998) uses historical-geographic specific geopolitical imaginations to analyze world politics; Dijkink (1996) proposes place-based geopolitical imaginations to deconstruct geopolitics. See also O'tuathail (1996). But their ethnographic utility is limited – for these works do not use ethnographic methods, with the exception of Megoran (2006).

Chapter 3: The curious case of exception: Article 262 and its history of the present

The GoI released a draft national water policy in 2012, which proposes setting up a permanent water disputes tribunal to resolve interstate water disputes expeditiously. This has been proposed in lieu of existing provisions for ad-hoc, temporary, and time-bound tribunals in the IRWDA 1956. This solution of a permanent tribunal, instead of allowing its adjudication by the Supreme Court, is a circuitous route to avoid violating the provisions of Article 262 of the constitution. The article provides for barring the Supreme or any other court's jurisdiction over interstate water disputes. The IRWDA 1956 is legislation to comply with this article; this act endows tribunals' awards with a force equivalent to a Supreme Court decree. Thus, a permanent tribunal can potentially become a parallel jurisdictional institution to the Supreme Court. Considering the history of intractable interstate water disputes and their recurrence, this could lead to many complexities and challenges in the already ambiguous legal spaces of resolution.

In this chapter, I investigate the antecedents of this barring of the Supreme Court's jurisdiction over interstate water disputes. Using a historical understanding of its evolution and implementation – modeled along the lines of Foucault's genealogy methods - I make the following arguments. First, there is adequate evidence to argue that certain historically contingent political realities required constitutional framers to conceive Article 262 in the way it exists now. It is imperative to understand this historical frame of reference and the particularities associated with it – the forms of rationality - while reconsidering interstate water dispute resolution. As a closely related topic, I also discuss the historical reasons why water has remained a provincial subject – along the line of argument suggested by D'Souza's

(2009) concerning the historical contingencies involved. Second, barring the Supreme Court from having jurisdiction over interstate water disputes may have been intentional, made for pragmatic political reasons in the interest of realizing the conception of an inchoate and incoherent federation of Indian states during its transition from a colonial power ruling over a set of disparate units to a Union of states. The third possibility is that the exception was simply a technology of the imperial state, one that remained as a vestige of the troubled transition years. These conclusions further advance the understanding of postcolonial condition that D'Souza (2006) suggested.

This analysis of exception leads to another set of conclusions that can potentially inform public policy related to interstate water dispute resolution in India. First, the analysis shows a couple of distinct disconnects, suggesting a kind of 'pilferage' – a transmission loss over time, in the conception and implementation of interstate water-dispute resolution mechanisms: one between the constitutional framers and the lawmakers of the IRWDA 1956, and the other between the lawmakers of the IRWDA 1956 and the practitioners and implementers of the law. There appears to be a deviation from the initial course and approach set out by lawmakers, moving towards precisely those traps that the original lawmakers were concerned over and wanted to avoid. The shifting forms of rationality have perpetuated colonial practices, which posed entirely different kinds of challenges. The disputes resolution has transformed into a litigatory process compared to an approach of mediation, negotiation, and reconciliation. Second, the bar on the Supreme Court's jurisdiction cannot be interpreted as a blanket bar, but as an enabling provision for expeditious resolution of disputes with a degree of finality to the decision. Finally, keeping in view of the manner in which the federal relations (center-state and state-state relations) are changing, resolutions cannot rely entirely on legal solutions. It is imperative to recognize that interstate water disputes are only likely to

grow. Increasing water use and demands, changing hydrological regimes brought on by climate change, and politicization of water disputes are some reasons. The legal resolution processes have to be supplemented by other alternative spaces for mediation, negotiation, and mitigation of disputes for their effective resolution.

The chapter is organized into five sections. In the immediate following section, I provide the background and discuss the specifics of the curious case of jurisdictional exception to interstate water disputes. I locate it in the perspectives about how this exception has apparently contributed to the ineffectiveness of such an arrangement. In the second part, drawing on a variety of archival resources, I trace the origin and evolutionary history of Article 262, going back to the times of the colonial government's early 20th century decentralization initiatives until the Constituent Assembly (CA) debates around forming the constitution. Focusing on the power relations between constituent units of the future union of India, I analyze how these may have contributed to the provisions in Article 262. In the third part, I review the parliamentary debates to highlight the vision and intentions of the lawmakers in formulating the act with particular focus on the Supreme Court's jurisdictional bar. In the fourth part, I contrast the considerations of the lawmakers with those of constitutional framers to discuss the disconnect between the two. I also draw on current practitioners' perspectives to discuss the deviations from the course set by lawmakers in practice to highlight the implications for interstate water dispute resolution. The fifth part concludes with a summary of lessons learned.

3.1. The curious case of exception: Article 262

Article 131 of the Indian constitution delineates the original jurisdiction of the Supreme Court, which includes any dispute arising between the GoI and the states, or between the states. But this is subject to Article 262, which provides for excluding disputes over shared

river waters. The article is exclusive and specific to adjudication of interstate river waters, making the parliament responsible for making appropriate legislation for adjudication of interstate river disputes.

Article 262. Adjudication of disputes relating to waters of inter-State rivers or river valleys

(1) 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, or in, any inter State river or river valley

(2) Notwithstanding anything in this Constitution, 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 as is referred to in clause (1).

Clause 2 of the article specifically empowers that the legislation may not allow Supreme Court's jurisdiction in adjudication of these disputes. The IRWDA 1956 was promulgated in compliance with the provisions of Article 262. Section 11 of IRWDA 1956 bars the Supreme Court's jurisdiction in these matters. In addition to this, the amendments to the act in 2002 under Section 6(2) invest the tribunal decisions with the force of a Supreme Court decree.

Section 11: Notwithstanding anything contained in any other law, 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 this Act.

Section 6(2): The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court.

Considering the experience of interstate water disputes resolution so far, this arrangement has not been satisfactory: common are long delays in giving awards, recurrence of disputes, poor implementation of awards, etc. Further, this law has evidently not been strictly adhered to.

Some scholars accuse the Supreme Court of exercising its jurisdiction in interstate water disputes and violating these provisions (see e.g., Sankaran 2009). Perceived violations have received plenty of attention on the grounds of potentially hurting states' interests or federalism in general (e.g., see D'Souza 2009, Sankaran 2009). However, not everyone is critical of the Supreme Court's actions. There are some, mostly practitioners, who have argued in favour of extending the Supreme Court's jurisdiction over interstate water disputes (see e.g., Nariman 2009). However, this issue is not a simple matter of being in or out of the Supreme Court's jurisdiction, but has to be understood in its particular and complex historical and political context.

The related debates in India are restricted to esoteric groups and tend to be legalist in nature. Yet these do not investigate the peculiar provisions of Article 262, but engage with the consequent and peripheral issues. Some blame the division of legislative powers over water between the center and the states for the impasse and intractability of interstate water disputes. Others engage with the adequacy and effectiveness of related legislative instruments, which essentially include IRWDA 1956 and the RBA 1956 (e.g., see Iyer 2002; SANDRP 1999). One of the major themes of these debates is around the division of legislative powers between the center and the states, which have been discussed in the previous chapter. The other theme engages with weak laws and their poor implementation. While the IRWDA 1956 was enacted to comply with Article 262, the RBA 1956 was in compliance with Entry 56. RBA 1956 enables setting up river boards for regulating and developing interstate water resources. River boards are conceived as institutional avenues for

facilitating interstate cooperation through regulation and development activities.⁵² But in practice, river boards function as implementation agencies for interstate water resource development projects (Chitale 1992, SANDRP 1999). They do not enjoy regulatory powers, but act as advisory bodies.⁵³ The National Commission to Review the Working of the Constitution (NCRWC) has called RBA 1956 a ‘dead letter’ and recommended repealing it (NCRWC 2002).

IRWDA 1956 has received far more attention than has RBA 1956, understandably. Frequent recurrences, politicization, institutional deficit in implementation, states’ noncompliance in tribunal awards– are some of the challenges that have received attention (e.g., see Iyer 2002, Chokkakula 2012). The failure in implementing tribunal awards is a complex challenge. It is often presumed that the tribunals could recommend mechanisms for implementing awards. At least some tribunals did so, after obtaining the consent of party states, e.g., by the Narmada Water Disputes Tribunal (NWDT 1978: 115-117). However, the 1980 amendments to the IRWDA 1956 vest this power to frame or establish implementing schemes within the central government, by the parliament.⁵⁴ The CWDT (2007) regarded this as a restraining provision for it to recommend an implementation scheme, even though it eventually recommended guidelines for implementing its award. Implementation schemes proposed by tribunals may lead to conflict with provisions in Section 6(2) of the IRWDA 1956, which gives a tribunal’s

⁵² River Boards Act 1956, Section 2. “It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation and development of inter-State rivers and river valleys to the extent hereinafter provided.”

⁵³ Nariman (2009) suggests that the historical context of drafting the RBA 1956 could explain this. The deeply centralized nature of the Indian state with strong center and subservient states in 1950s could be the reason for assuming that advisory institutions like the River Boards could be effective.

⁵⁴ IRWDA 1956, Section 6(A)(1): “Without prejudice to the provisions of Section 6, the Central Government may, by notification in the Official Gazette, frame a scheme or schemes whereby provision may be made for all matters necessary to give effect to the decision of a Tribunal.”

award the same force as a Supreme Court decree.⁵⁵ While these ambiguities remain, states' non-compliance with tribunal awards is a frequent circumstance, one that triggers recurrence of disputes. Lack of sanctions against non-compliant states may be a reason for their persistence (Iyer 2002). But it is unlikely that sanctions against states could work in these times of assertive states.

These maladies prompted a call for repeal of the IRWDA 1956. The NCRWC (2002) has recommended repealing the act, but not entirely on the grounds of ineffectiveness. For the NCRWC, the jurisdictional exception vested in tribunals is untenable. It has instead recommended a more comprehensive legislation, while ensuring that the Supreme Court is enabled to extend its jurisdiction over interstate water disputes.

8.11.4 The Commission is of the view that it is not necessary to exclude Inter-State Water Disputes from the original jurisdiction of the Supreme Court under article 131 of the Constitution and that such disputes should also be made to fall within the exclusive jurisdiction of the Supreme Court. It has been noticed that Inter-State Water Disputes Act, 1956 has vested the Tribunal with a very unique jurisdiction under section 3... Consequently, even a proposed legislation can be the subject matter of a dispute and interdicted by the Tribunal by a *quia timet* action. Courts do not exercise such powers of interdiction of legislative measures. Appropriate provision should be made for conferring such a unique power on the Supreme Court. It is recommended that the Inter-State Water Disputes Act, 1956 be repealed and in its place a more comprehensive parliamentary legislation should be enacted. However, it is necessary to make express provisions that the suit shall be instituted in the Supreme Court, which shall have exclusive jurisdiction (NCRWC 2002).

⁵⁵ For a related discussion, see the CWDT (2007), *The Report of the Cauvery Water Disputes Tribunal with the Decision, Volume V, Chapter 8*.

Further,

8.11.5 It is not necessary to repeal article 262 of the Constitution for shifting the jurisdiction from the Tribunal to the Supreme Court. Article 262 is a very important provision and the said provision being a part of the Constitution as originally enacted and having come up before the courts several times, it is unlikely to successfully challenge the same. Once it is omitted or repealed, difficulties would arise if after experimenting on the changed form of adjudication, it is later felt or desired to have a Tribunal with a modified or changed jurisdiction or even if it is felt that the system of adjudication by a Tribunal as in the Act of 1956 would be better (NCRWC 2002).

Thus the ambiguities persist: the Supreme Court's jurisdiction has to be extended to interstate water disputes, but Article 262 cannot be meddled with. There have not been any efforts to question this unusual provision or its rationale. These provisions have largely contributed to the litigatory trends and a series of legal and constitutional complexities, contradictions, and crises. What were the considerations in conceiving Article 262? Why was there a need to defer enacting legislation in parliament to a later stage? Why was it necessary to provide for (or mandate) excluding interstate water disputes, when an overarching original jurisdiction of the Supreme Court was allowed under Article 131?

These are some of the central questions driving my efforts here, where I pursue the particular historical contingencies of the political considerations of these provisions under Article 262. My inquiry borrows support from the rather hypothetical, yet compelling, arguments of D'Souza (2009) discussed earlier. These arguments are in the context of a different, but related issue about why water must by necessity be a state subject. She suggests two grounds for why it has to be so. The first has its roots in the formative history of the Indian Union, and the second is linked to the goals of preserving democratic federalism. For her, the constitution was a compromise document evolved through negotiations between several

stakeholders and social forces during the formative stages of the Indian Union. She argues that a large number of Princely states conditionally acceded to the Indian Union, with expectations of a certain amount of autonomy. Since many of these states were agrarian-based, they refused to part with regulatory powers over water, to abrogate their power to a not so certain but definitely remote federal government.

The other dimension is from the angle of implications for federalism by the Supreme Court's engagement in interstate water disputes, which has been viewed as undermining federalism (D'Souza 2009, Sankaran 2009). However, the Supreme Court is left with little choice but to intervene, often forced to take up an executive role due to the legal ambiguities and institutional deficit for implementation of tribunal awards (Chokkakula 2014). States frequently seek redressal by the court for alleged violations of existing agreements or tribunal decisions. The latter, violations of tribunal decisions, is often the case because of poor implementation of tribunal awards, sometimes driven by the tendencies for politicization (Iyer 2002, Chokkakula 2012, 2014). Such non-compliance and the deviant nature of states from law is confusing and confounding, contributing to inefficiencies in the resolution of disputes. Most of these complexities are rooted in Article 262's exception to interstate water disputes. Yet the Supreme Court's apparent violation of these provisions by intervening in the disputes is alleged to be undermining Indian federalism, without its critics explaining how it does so. The exception is taken as a given, without questioning the rationality of these provisions in preserving federalism.

The idea is to question this 'given' here and 'distil the complex and multiple historical processes' that have led to this practice, as Foucauldian genealogy method suggests (Foucault 1991: 79). This is a very productive path for other reasons as well - which D'Souza (2009) alludes to - about the negotiation processes involved in writing the Indian constitution. There

is a rich body of literature associated with Indian constitutionalism, about the negotiations and compromises in constitution writing and state-making in India, by scholars of law and democracy (e.g., Granville 1966, 2003; Bhagavan 2009). But the historiography of state-making and democracy in India has been mostly the ‘colonial mode of historiography,’ which suppressed and marginalized other narratives – especially the Princely India (Singh 1993). It has not adequately addressed the element of Princely states’ role in India’s nation building (Groenhout 2006; Singh 1993, 2003; Zutshi 2009). Generally, fewer studies have attempted to understand the Princely states’ contribution to India’s imagination, its hybrid sovereignties, and state-making in India, which were nevertheless important elements of India’s postcolonial condition (e.g., Copland 2002, Bhagavan 2009, Wood 1984). Hence this current inquiry into the antecedents of Article 262 also contributes to this body of work about Princely states and their contribution to state-making in India.

3.2. The history of the present: A genealogy of the exception (Article 262)

The previous section sets the direction and dimensions of the inquiry into the historical evolution of Article 262. First, the trajectory of the division of legislative powers between the center and the constituent units is important to situate *why* disputes over shared waters is excluded from the original jurisdiction of the Supreme Court. Second, and after D’Souza (2009), the constitution was a document arrived through negotiations between different social forces in the CA. These had taken place in the momentous but uncertain times of nascent and emerging federation. A subject like interstate water disputes, with its bearing on interstate and federal relations, is of critical importance. Third, the transition from a colonial state to an independent federal democracy accompanied tenuous reconfiguring of power relations between the union and the constituent units. This is an influencing factor in the constitutional framers’ approach to interstate water disputes. I focus on these dimensions in tracing the

historical evolution of Article 262. I draw on a variety of archival sources and materials, including the CA, Indian parliamentary debates, and also the British House of Commons' documents before and after the Government of India Act of 1919 (GoIA 1919).

The Constituent Assembly's dilemma

The CA debates, an immediate reference for such an inquiry, do not help except to generate further curiosity about the puzzle surrounding Article 262 and its provision barring the Supreme Court's jurisdiction over interstate water disputes. The records do not include any debates or discussions around this. The Chairman of the CA, Dr B R Ambedkar, simply proposes the motion for including Article 262 in its current form, and it was adopted without any further discussion. Dr Ambedkar proposes the motion with the following:

Sir, originally this article provided for Presidential action. It was thought that these disputes regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereo-typed to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently, I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.⁵⁶ (CA debates - underlined emphasis mine)

This absence of either a prelude or postscript is unusual. Article 262 replaces Articles 239-242 of the Draft Constitution, which in turn are adapted from Articles 130-133 of the GoIA

⁵⁶ <http://parliamentofindia.nic.in/ls/debates/vol9p30c.htm> accessed on 2 October 2011.

1935. The GoIA 1935, an important precursor to Indian federation, is the original basis for the constitution of India. The Draft Constitution draws extensively from the GoIA 1935, and is a modified version of it to suit the changed context of an independent India. To understand their evolution, see annex A with Articles 130-133 of the GoIA 1935 and annex B with Articles 239-242 of the Draft Constitution. Articles 239-242 from the Draft Constitution in the annex B have been presented as an edited text of the articles 1301-33 of GoIA 1935 tracking the changes, to provide a comparison between the two. The comparison helps to conclude the following:

- (a) The reference to the Governor-General in the GoIA 1935 is replaced by the President in the Draft Constitution. These articles, both in the GoIA 1935 and the Draft Constitution, are listed under the chapter of administrative relations with a sub-head, *Interference with Water Supplies*. In GoIA 1935, this chapter engages with defining relations between the British provinces and the Princely states.⁵⁷ Thus, the articles in GoIA 1935 address interstate water relations between the integral constituents of British India (the British provinces) and those not integral constituents of British India. Conversely, the articles in the Draft Constitution address interstate relations between all constituents in independent federal India.⁵⁸

⁵⁷ The GoIA 1935 differentiates between Princely states which acceded to be part of federation through an instrument of accession (federated states) and those that did not. However the provisions under the *Interference with Water Supplies* apply to these states in a similar manner unless the Instrument of Accession includes explicit provisions contrary to this.

⁵⁸ It is important to note that states were not reorganized yet, not until 1956. The constituents of the Union of India during the period of CA were organized into four categories. Broadly - Part I included British India provinces (Governors' provinces), Part II – Chief Commissioners' provinces (Delhi, Ajmer, and Coorg), Part III- Princely states, and Part IV – Andaman and Nicobar Islands. Part III states in the First Schedule were listed in two divisions: Division A states include listing of 19 major Princely states and Division B had other Princely states that could not be enumerated at that stage.

- (b) The difference in power structures and relations between the constituents in the respective contexts, i.e. colonial-ruled India and independent India, were evident in the manner that the articles are framed. Under colonial rule, the Governor-General had the power to appoint a Commission to inquire into disputes; there was another level above the Governor-General in the hierarchy, His Majesty in Council, whom the Princely states could approach for further redressal. In the Draft Constitution for independent India, it was left to the President's discretion.
- (c) In both contexts, the Federal Court or Supreme Court did not have jurisdiction over these disputes. In independent India, the Supreme Court's role was restricted to clarification of issues related to law.
- (d) The Governor-General or the President, in either case, was empowered to appoint a commission. The President was supposed to give orders in accordance with the commission's report, but the Governor-General had no such obligation.

In his motion before the CA, Ambedkar refers to the presidential action proposed under these articles of the Draft Constitution. He mentions why the presidential action was proposed and then reconsidered: the interstate water disputes were initially thought to be rare; it was realized later that there could be 'very many disputes' and hence it would be necessary to create 'a permanent body.' These are some key words that give insight into their thinking. In the absence of records to the contrary, it can safely be assumed that Ambedkar and his colleagues in the CA felt there was a need to deviate from the proposed arrangements in the Draft Constitution for engaging with interstate water disputes.

Ambedkar also hints at the reasons for discarding the articles in the Draft Constitution. The arrangement under Articles 239-241, was 'too hide-bound or too stereo-typed to allow any elastic action.' The referral to a commission by the President was too stereotyped and might

not ‘allow any elastic action’ to meet the challenge of the likely ‘very many disputes.’ What kind of elastic action (response) – ostensibly in the form of a permanent body (or arrangement) – was sought has to be understood. However the CA appears to be clear that this elastic, but permanent response might need an enabling provision of the Supreme Court’s jurisdictional bar, as provided in Article 262(2). A pause to consider the information so far allows hypothesizing the possible reasons for CA’s deference of the responsibility to Parliament. Ambedkar and his colleagues were uncertain about the amorphous and evolving conditions of the Princely states’ integration into independent India, and the rapidly changing relations between the Indian Union and its constituents. They were conscious that a bar, similar to the one on the Federal Court’s jurisdiction in GoIA 1935, was apparently needed to address the apprehensions of the loosely federated states about coming under the jurisdiction of the federal court – the Supreme Court of an independent India. But then Article 131 of the constitution vests exclusive jurisdiction over interstate matters generally. So, it is still yet to be resolved why such an exception was specific to interstate water disputes. Nevertheless, via Article 262, the CA deferred the responsibility of long term measures of ‘elastic action’ for interstate disputes resolution to the parliament, and it provided the enabling provision of the bar on Supreme Court’s jurisdiction.

This re(de)constructed understanding of the CA’s motives in framing Article 262 throws another gauntlet. After getting discarded by the CA, the interstate water dispute resolution arrangements in the GoIA 1935 and the Draft Constitution get resurrected by the parliament, in the form of the IRWDA 1956. The act is but a revamped version of Articles 239-242 in the Draft Constitution (see annex B). The reference to the President in the Draft Constitution is replaced by the central government. Instead of the President setting up a commission, the central government is empowered to appoint a tribunal for adjudicating the disputes. The act

also retains the jurisdictional bar of the Supreme Court. We need to understand the resurrection of these practices in the form of an Act, even after the constitutional framers chose to discard it. Parliamentary debates at the time of the IRWDA 1956 legislation may provide some explanation. I take up this enterprise of probing into the parliamentary debates in the next section. But before that, I want to understand the historical reasons that shaped the provisions within the GoIA 1935 itself, which imposed the bar on the federal court's jurisdiction in interprovincial water disputes. I want to argue that the colonial legacy continued in influencing the framing of Article 262 and IRWDA 1956. I found the history of constitutional reforms under colonial rule illuminating in understanding the evolutionary context of these mechanisms.

To revisit briefly, the practice of reference to the President/central government in the Draft Constitution and later in IRWDA 1956, as well as the establishment of a commission/tribunal, is similar to the provisions under the GoIA 1935 where the Governor-General appoints a commission. The GoIA 1935 is a critical milestone in conceiving of a Federation of India existing as an autonomous self-governing entity, although it was as a dominion under British sovereign rule. This is also a moment that represented the transition from an earlier, rather explicitly imperial, power relation between British India and the Princely states to a moderated relation, though disguised as a democratic and decentralized one in the larger imagination of an Indian federation. This moment of transition had involved intense negotiations focused on the division of powers under the broad scope of bilateral relations between the British-led Indian government and the Princely states. The reorganization of legislative powers in both the GoIA 1935 and the constitution of India have roots in these transitions. It is also important to note that this reconfiguration of relations between the British government in India and the Princely states is both a part of, as well as a

consequence of, larger structural changes associated with post-war (World War I) reconciliation within the British Empire. This was the time when the Empire, in response to nationalist assertions, was moving towards creating dominions as integral parts of the Empire with greater local autonomy and self-governance (Copland 1997).

Situating the change in power relations between the colonial government of India and other constituents within this larger historical frame is necessary. This serves two particular purposes relevant to the current enterprise. One, division of legislative powers is crucial for understanding why adjudication of interstate water sharing was treated separately and outside the purview of the highest judicial institution – the Supreme Court - of the federation. Two, this also helps us examine D’Souza’s (2009) assertion about why water had to be necessarily a state subject.

3.2.1. Princely states, politics and power relations⁵⁹

Colonial rule in India had its origins in the British East India Company’s entry in the early 18th century. The East India Company pursued an aggressive policy of annexation of Princely states in India with the goal of creating a federation of Indian states. During Governor-General Wellesley’s time in the late 18th century, an institution of subsidiary alliance was put in place for Princely states. This establishment of a single paramount power was the beginning of the consolidation of British imperial rule over India.

In the subsidiary alliance policy, the paramount power assured protection from external aggression and maintenance of internal peace. In return, the Princely states shared

⁵⁹ I rely on Menon’s (1956) very informative book, *The Story of the Integration of the Indian States* for this broad sweep narration of the historical context in this section. For a closer understanding of the ties and tensions between the colonial British government of India and the Princely states, see Copland (1997).

responsibility for common defense and ensured good governance within their respective territories (Montagu-Chelmsford 1918). This governance arrangement under the subsidiary alliance involved placing a British Resident with troops within the Princely state's territory. The Princely state would bear the expenses of maintaining the British Resident and the troops, besides paying the paramount power for the protection. By the middle of 19th century, close to the entire sub-continent was under the British subsidiary alliance, including major Princely states such as Hyderabad, Mysore, Travancore, Gwalior, etc. These states were under an assumed status of sovereign entities enjoying mutually beneficial bilateral relation with the British Crown. But in reality, this was not so. Menon (1956:7) quotes journalist Henry Mead's writings to describe the reality of the Princely states:

The sovereigns of what are called independent States live in a state of abject dependence upon the will of the British agency at their various Courts. The whole functions of government are in most cases exercised by the Resident, in fact, if not in appearance; and the titular monarch sighs in vain for the personal freedom enjoyed by his subjects...

This was the broad power structural relation within which the Princely states were situated. Following the 1857 revolt, this subsidiary alliance took a different shape with the Crown taking over governing India from the Company through an act of the British parliament - the Act for the Better Government of India (1858). The aggressive policy of annexation of Princely states was abandoned. As a reward for their role in suppressing the 1857 revolt, the Princely states were assured sovereign treatment. The Princes were allowed to rule their states on their own and choose their successors. But in practice, the relationship remained similar to that of the subsidiary alliance policy and the paramountcy relation continued (Copland 1982, Ashton 1982). A Political Department and its machinery replaced the subsidiary relationship. An Indian Political Service was created under the Governor-General,

who also assumed the position of Viceroy – a representative of the Crown – to assure the ‘bilateral’ relationship between the Crown and the Princely states. The Political Department representatives along with a police force were installed in the states for coordination and ensuring law and order.

This arrangement had a particular advantage for the colonial government. The British constitution did not recognize the Princely states or their subjects as part of their Empire, nor could the British parliament legislate on behalf of the Princely states. Princes enjoyed powers as ‘independent’ rulers, with a disguised leash over them through the Political Department. Princes were made responsible for any misgovernance towards their subjects. This put them in a vulnerable position and reinforced the subsidiary relation. Jealousies and disagreements between the Princes exacerbated their vulnerabilities further. Over time, the British colonial government encroached over the assumed sovereignty of the Princely states through various means. Besides maintaining law and order, installation and expansion of infrastructure and communications facilities such as railways were the other means of exercising this power.

3.2.2. The making of a dominion federation: centrifugal and centripetal forces

The Princely states had an opportunity to arrest this decadence in their relationship with the Crown during and after the First World War. Their active participation in the war for the Crown warranted reviewing these relations. Consequently, the annual conference of the Chiefs and Princes received far greater attention for coordination purposes between the British led government of India and the Princely states. Later, Montagu-Chelmsford recommended permanence to this coordination in the form of a Council of Princes – a permanent consultative body under the chairmanship of the Viceroy.

But these changes were also part of natural progression in the colonies towards decentralization and dominion status within the British Empire; the war had ‘merely precipitated’ these changes, which included earlier reforms such as the Indian Councils Act 1892 and Morley-Minto reforms of 1908 (Reading 1933). In this progression, the Montagu-Chelmsford reforms that formed the basis for the GoIA 1919 were important milestones in advancing decentralization and provincial autonomy in British India. In an ostensible step towards further consolidation of the empire in India, His Majesty’s government commissioned an inquiry with an explicit brief, to realize “...increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire” (Montagu-Chelmsford 1918: 3). This inquiry’s primary goal was to look into ways of devolving powers to the provinces within British India and increase participation of Indians in the administration. Montagu-Chelmsford’s report was aimed at restructuring governance within British India with the aim of remaking the provincial governments into self-governing units. But the report had also paid remarkable attention to British India’s relations with the Princely states or the ‘Native states;’⁶⁰ it paved the way for the GoIA 1919 and the subsequent reforms of decentralization.

⁶⁰ The number of ‘Native States’ or the Princely states varies with the source and period. The Census of 1901 puts it at 700 Princely states occupying about 39 percent of the area and hosting 21 percent of the population in the sub-continent (Source: Census 1901, accessed at http://dsal.uchicago.edu/statistics/1894_excel/) on 27 June 2013). The Joint Committee on Indian Constitutional Reforms (1934) puts the numbers as nearly 600 states, among them about 240 states (including great states like Hyderabad, Mysore, Baroda, Kashmir, Gwalior, and Travancore) and, 300 odd estates and *jagirs*. The Draft Constitution of India notes, “... it is not possible to enumerate because owing to mergers of various kinds many of the states may disappear in larger units.” [see foot note to Division B], (CA of India, 1948, pages 159-160). Richter’s (1973) work on political change in Princely states lists more than 550 states under various kinds of integration: 331 states were incorporated into States Unions, 213 states merged into British India provinces, 8 retained their political boundaries.

Until the Montagu-Chelmsford report, legislative powers were concentrated with the British government of India, which was making all laws and policies for British India (the “provinces”), leaving strategic areas of military and foreign relations to the British Parliament. British India effectively became a unitary state with the legislative and executive powers at the center. Montagu-Chelmsford noted the absence of the provinces’ role in making laws and made recommendations about the division of functions between the center and the provinces without actually specifying which functions were to be transferred to the provinces, instead recommending creating special committees for each province to look into the matter. They however felt the need for the colonial government of India to retain a general overriding power on any of these functions, and hoped that the colonial government of India would not interfere in provincial subjects unless their own functions were directly affected by provincial legislations. The GoIA 1919 made provisions accordingly, for classification of functions between the center and the provinces while stipulating some caveats for ensuring the primacy of the center.

Two simultaneous processes, both vigorously fueled and transformed by the nationalist movement for independence, had an impact in consolidating the idea of Indian federation: first, decentralization efforts within British India and, second, the changing relations between British India and the Princely states. The latter process was also aided by a growing dependence of the Princely states on British India for services such as internal security, railways, foreign relations, communications, etc. British India saw an opportunity in this increasing common ground and interdependency for creating an Indian federation with the Princely states as integral parts. These attempts were resisted by the Princely states for an obvious reason - the maintenance of their sovereignty. There was a constant tussle between these two forces, driven by the opposing interests of integration and sovereignty.

The status of the Princely states varied greatly: some of them enjoyed full autonomy with limited interdependencies of connectivity and communications, while in other states, British India had absolute internal control of their affairs and the Political Department managed all relations. However, to a large extent, the Princely states were in charge of many immediate local interests, especially agriculture, irrigation and water supplies. British India's domination was concentrated mainly in strategic and trade interests such as: defense, tariffs, exchange, opium, salt, railways, and posts and telegraphs. Montagu and Chelmsford saw this increasing British domination in these strategic areas as a natural force helping the integration of the Princely states into an inevitable future Indian federation, while the Princely states were able to sustain their sovereign aspirations. Montagu-Chelmsford's observations eventually turned out to be prophetic:

The gradual concentration of the Government of India upon such matters will therefore make it easier for the states [Princely states], while retaining the autonomy which they cherish in internal matters, to enter into closer association with the central Government if they wish to do so. But though we have no hesitation in forecasting such a development as possible, the last thing that we desire is to attempt to force the pace. Influences are at work which need no artificial stimulation. All that we need or can do is to open the door to the natural developments of the future. (Montagu-Chelmsford 1918: 241).

Montagu-Chelmsford also recommended formalizing an otherwise ad-hoc body of a Privy Council – the Crown's council of advisors for India, in which the Princely states should be members. They suggested turning it into a Council of Princes as a permanent consultative body for exchanging views on implementing policies of common interest between British India and the Princely states. Accordingly, a Chamber of Princes was created to voice their collective concerns and aspirations to the government of India. This Chamber of Princes played an important role in engaging with the Butler Commission, the Simon Commission,

and the following three Round Table Conferences in shaping the structure of an Indian federation. As an outcome of these commissions and conferences, a Government of India bill was introduced in the British Parliament, which later became the GoIA 1935.

3.2.3. Interstate waters at the intersection of imperial interests and sovereign aspirations

The interim period between the GoIA 1919 post Montagu-Chelmsford reforms and the GoIA 1935 witnessed many changes in the relations between the Princely states and British India. As Montagu-Chelmsford predicted, British India had to keep “open the door for developments of the future,” the natural forces moved towards an Indian federation with the demands for dominion status to the Indian federation, with Princely states as an integral part of this federation. This did not happen before the Princely states had had their own success in asserting their ‘sovereign’ interests. The Princely states asked for the creation of what became the Butler Committee, with the specific mandate of looking into the relations between British India and the Princely states. The Butler Committee was unequivocal in its observations about the paramountcy relation between the British and the Princely states: the Princely states were bound to the Crown and not to the government of British India, implying the Crown’s obligation in protecting the Princely states’ interests – in other words, against federating them. The Princely states voluntarily entrusted the functions of foreign relations and the provision of internal and external security to the Crown, and resisted becoming part of the Indian federation. As an outcome of this, the Princely states were attached to the Indian federation via the Crown’s representative, the Viceroy, and not to the Governor-General of the colonial government of India. The Viceroy position was created separate from the Governor-General in British India precisely for this purpose, to liaison with the Princely states.

However, popular agitation for independence impacted these interests in fundamental ways and steered the course towards an Indian union. The GoIA 1935 was a precursor to this imagination of an independent Indian union. From the Montagu-Chelmsford reforms until the abdication of power by the British and the declaration of independence, the organization of governance functions between the central government and the provinces was shaped by a triad of powers and associated interests: (a) the British Government's imperial interests, which later transformed into amicable withdrawal, with a concomitant role and responsibility for arbitrating between key stakeholders: the Congress, the Muslim League, and the Princely states; (b) forces of the independence struggle driven by an imagination of India where Princely states were integral parts of a federal and democratic Indian Union; and, (c) Princely states with aspirations for revival of sovereign status through annulment of treaties that bound them with British India, yet which were constrained by their growing interdependencies with core British India parts. I discuss these struggles below, focusing on how these shaped Article 262 and the IRWDA 1956 in their current forms.

Within British India, this division of functions of governance supposedly varied across provinces prior to passage of the GoIA 1935, as recognized in the GoIA 1919 following the recommendations of the Montagu-Chelmsford report. But the GoIA 1935 had a clear division of functions by providing a common list of functions between the federation and the provinces. Part V (Chapters 1 and 2) of the GoI Act 1935 provided for three sets of lists under the Seventh Schedule: Federal, Provincial, and Concurrent lists. The subject of water was included as part of the Provincial List as follows: "19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power." (GoIA 1935, p. 304). This implied that the provinces had the exclusive power to enact

legislation for water as described, subject to the overriding powers of the government of India.

Interstate waters received special treatment by the GoIA 1935, as seen earlier. But these arrangements of engaging ad-hoc commission at the discretion of the Governor-General had their roots in the much earlier Montagu-Chelmsford report. Anticipating greater integration of the Princely states and an evolving federation, Montagu-Chelmsford made recommendations about the arrangements for resolution of inter-provincial disputes or the disputes between the government of India and the Princely states. Their proposal did not make into the GoIA 1919. But it is worth perusing for its distinct resemblance to the arrangements under GoIA 1935 and eventually under the IRWDA 1956.

Commissions of inquiry into disputes – 308. Our next proposal is concerned with disputes which may arise between two or more states, or between a state and a local government or the government of India, and with a situation caused when a State is dissatisfied with the ruling of the Government of India or the advice of any of its local representatives. In such cases, there exists at the present moment no satisfactory method of obtaining an exhaustive and judicial inquiry into the issues, such as might satisfy the states, particularly in cases where the Government of India itself is involved, that the issues have been considered in an independent and impartial manner. Whenever, therefore, in such cases the Viceroy felt that he should appoint a commission, on which both parties would be represented, to inquire into the matter in dispute and report the conclusions to him. If the Viceroy were unable to accept the finding, the matter would be referred for decision by the Secretary of State. The commission that we have in mind would be composed of a judicial officer of rank not lower than a High Court Judge and one nominee of each of the parties concerned. (Montagu-Chelmsford 1918: 245-6)

The GoIA 1935 had the challenge of considering relations with the Princely states as part of an All-India federation. Under the GoIA 1935, the colonial government of India's powers to

legislate on behalf of the Princely states were subject to the Instruments of Accession (IoA) by which they became part of the Indian Federation. The IoA included a schedule of administrative functions that the Princely states desired to be governed by the federal legislature. The list of functions varied for each Princely state, contingent on a pre-existing treaty or a new understanding as per the IoA. The Princely states' aspirations of sovereign status and resistance to integration into the federation could be gleaned from a series of communications released by the Secretary of State in March 1935. In these communications, the Princely states, through the Chamber of Princes, expressed their serious apprehensions over the Indian federation and insisted on preserving their sovereign and bilateral relation with the Crown. The communications covered a whole range of issues, but overall the message was clear: the Princely states sought to maintain their bilateral relation with the Crown while acceding to the Indian Federation. Following a resolution at a meeting of Indian princes and representatives held at Bombay on 25th February 1935, the leading princes – the Maharaja of Patiala, the Nawab of Bhopal, and the Maharaja of Bikaner wrote a letter along with a separate note specifying their views on the Government of India bill 1935. The princes insisted that the IoA was meant to be “necessarily bilateral in effect” as per the proceedings of the Third Round Table Conference. And the functions of the government agreed to be transferred under the Instrument of Accession were “...being made over to the Crown as a trustee for their [functions'] delegation to the Federation, to be jointly exercised by British India and Indian States” (Secretary of State for India 1935: 17).

In a Ministers' Report of Princely states preceding the resolution by these leading princes, dated 21st February 1935, the Ministers criticized the proposed draft Instrument of Accession for not reflecting the bilateral spirit, as agreed at the Third Round Table Conference (Ibid: 5-12). Insisting on the bilateral nature of their association with the federation, the leading

Princes were also apprehensive about the future of their relations with the federal scheme. Commenting on a clause associated with a possible breakdown of the constitution, "... [if it] was not repaired and the machinery of the government restored to its normal structure within a certain definite time, the powers transferred by the States must revert to the Princes owing to the failure of the Federation" (Ibid: 17). The arrangement to address interstate water disputes was subjected to criticism on the account of Governor-General's unilateral and discretionary power to refer the matter to an ad hoc commission. Their concerns about the uncertainty of the federation and the eventual degeneration of the individual treaties protecting their interests under such arrangements were evident from their objections to the relevant sections of Government of India bill 1935 below.

14. Clause 130 [of the Government of India Bill 1935] deals with disputes regarding water rights, allowing reference to an *ad hoc* tribunal of any complaints made by a Ruler; but reference is only permissive and may be allowed "unless the Governor-General is of opinion that no action should be taken." The stronghold of paramountcy has accordingly been kept impregnable. The Princes fear that it will go on getting reinforced with the progress of time by newfangled theories of acquiescence, disuse and case law with all its ancillary powers. The highest courts of justice in the Dominions have held that "no Federal authority can, consistently with its paramountcy in the sphere of legislation, irrevocably divest itself of its administrative authority." Clause 8 of the Bill lends colour to this misgiving when it broadly lays down that "the executive authority of Federation extends (a) to matters with respect to which Federal Legislature has power to make laws." Reservations made and authority saved in the Instrument of Accession are likely to be brushed aside under the authority of judicial decisions. There have been decisions of Federal Courts which have held that treaties made by Crown with States that have not any status in international law are not treaties, but matters of only domestic concern to that particular country. The Princes emphatically urge that they would not enter into a Federation where such an extension of authority is possible and remains unprovided for. (Secretary of State for India, 1935: 21) (underlined emphasis mine).

In spite of this resistance, the British government had its way with the ad hoc arrangements which provided absolute discretion to the Governor-General in interstate water related matters. Princes were clearly apprehensive about federal judicial processes and their competence in preserving the sanctity of their Instruments of Accession. But at the same time, they were also worried about the absolute discretion of the Governor-General, and accused the British of attempting to preserve paramountcy.

This historical analysis allows us to speculate on possible explanations for the CA's predicament and dilemma that led to Article 262 in its current form.⁶¹ Arguably, the Princely states' apprehensions and their sovereign aspirations shaped the provisions related to interstate matters. The political expediencies for such exclusion were evidently clear. It was important for the Crown to assuage the Princely states' apprehensions and at the same time assert the paramountcy of the Crown. The exclusion was necessary to assure Princely states that the arbitration of interstate matters would be on bilateral terms and contingent to their particular relations (treaties) with the Crown; but not under a federal court which would undermine their 'sovereign' status and reduce them to a federated state. At the same time, the Governor-General's discretionary powers in engaging with interstate disputes ensured that the imperial relation between the Crown and the Princely states was preserved.

These power tussles for maintaining the sovereign status also led to preserving the status quo with respect to water supplies and irrigation as an autonomous function in Princely states.

Within British presidencies and provinces, the governance of water supplies management was

⁶¹ Before I pursued this historical analysis, I posed this question about Article 262 to many lawyers including senior advocates Fali Nariman and Anil Divan – who specialize in transboundary water disputes law. Most suggested looking up B N Rau's writings. B N Rau was an Indian civil servant and constitutional advisor to the Constitutional Assembly. B N Rau also chaired the Indus Waters Commission, to resolve the first interprovincial dispute after GoIA 1935, between the provinces of Punjab and Sindh. My search in his personal papers preserved at the Nehru Memorial Museum Library in Delhi did not yield any useful information.

subject to its unitary nature of government, which eventually devolved. Unlike the current Union List, the Federal List of GoIA 1935 did not include any functions related to water. Instead water supplies and irrigation functions were included in the Provincial List. Clearly, water as a state or provincial subject in its current form had this historical precedent and continuity.

Thus, we can argue that the arrangements of keeping interstate waters out of federal court jurisdiction and continuing water as state subject were historically contingent and politically pragmatic necessities for making the Indian federation work. This was perhaps necessary under colonial rule. But it still begs an explanation to this question: how did this remain so even after the end of the colonial rule and formation of the sovereign federal republic of India? Again, it appears that unification, in particular the integration of Princely states into the Indian Union before and after independence, played a crucial role here.

The integration of the Princely states into the Indian federation under the colonial British government administration remained tenuous and incomplete, facing sustained resistance and defiance (Menon 1956, Copland 1997, Singh 2003). It had become clear that an Indian federation with the Princely states' integration was not going to happen by the time the Second World War broke out (Copland 1997). The British administration was on the back foot, for they needed the 'men, money and material,' as Menon (1956) puts it, from the Princely states to fight the War. Post-war, Britain entered its reconstruction mode. And the British decision to withdraw and declare independence threw the Indian sub-continent into another phase of turmoil. This turmoil was characterized by two strong undercurrents of importance. One, the independence movement gained strength in the Princely states as well, and there was considerable pressure from within for the Princely states to become part of the Indian Union (Singh 2003). This worsened the situation for the Princely states in the face of

the Crown's decision to withdraw. Two, partition and the fractured political imaginations of the Indian Union combined with the Princely states' hopes of wriggling out and reviving their sovereign status contributed to chaotic conditions. Now, instead of the British India government, it was the leaders of (to be) independent India and Pakistan who were negotiating with the Princely states for unification, arbitrated by the Viceroy. Given the volatile circumstances and short time period available between the declaration of independence and partition, both sides (India and Pakistan) scaled up their efforts to lure, persuade, and coerce the Princely states to join their respective unions (Menon 1956). The CA for the integrated Indian Union began its deliberations in 1946 and closed their deliberations in 1949. The partition and independence happened while the deliberations were going on. These uncertain conditions might have made the CA members dither over the kind of arrangements needed for interstate water adjudication.

These political expediencies and power struggles around the Princely states' integration may have led to the deference [Article 262(1)] and exception [Article 262(2)] provided by the CA. However, this appears to have inadvertently carried the original imperial interests in its design under GoIA 1935. The Joint Committee on Indian Constitutional Reforms (1934), which was the basis for GoIA 1935, provides evidence to make such argument.

A 'White Paper' preceded the Joint Committee's deliberations on constitutional reforms, in which the Committee discussed its proposals in the 'White Paper.' In the context of arrangements for inter-provincial coordination generally, the Committee recommended an Interprovincial Council, along the lines of the Interstate Council provided under Article 263 in the current constitution of India. The deliberations of the Committee around interprovincial disputes, however, were interesting. The Committee's recommendations were similar to what

exist presently – the federal/ Supreme Court for addressing interprovincial differences – but the Committee took up the resolution of interprovincial differences over water differently.

224. There is, however, one subject with respect to which we are of opinion that specific provision ought to be made. The Government of India has always possessed what may be called a common law right to use and control in the public interests the water supplies of the country, and a similar right has been asserted by the legislation of more than one Province as regards the water supplies of the Province. “Water Supplies” is now a Provincial subject for legislation and administration, but the Central Legislature may also legislate upon it “with regard to matters of inter-provincial concern of affecting the relations of a Province with any other territory”. Its administration in a Province is reserved to the Governor in Council, and is therefore under the ultimate control of the Secretary of State, with whom the final decision rests when claims or disputes arise between one Provincial Government and another, or between a Province and a State. This control of the Secretary of State obviously could not continue under the new Constitution, but it seems to us impossible to dispense altogether with a central authority of some kind. (page 124)

225. The White Paper proposes to give to the Provinces exclusive legislative power in relation to “water supplies, irrigation and canals, drainage and embankments, water storage and water power,” and reserves no powers of any kind to the Federal Government or Legislature. The effect of this is to give each Province complete powers over water supplies within the Province without any regard whatever to the interests of neighbouring Provinces. The Federal Court would indeed have jurisdiction to decide any dispute between two Provinces in connection with water supplies, if legal rights or interests were concerned; but the experience of most countries has shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for settling disputes between Provinces or States where the interests of the public at large in the proper use of water supplies are involved. It is unnecessary to emphasise the importance from the public point of view of the distribution of water in India, upon which not only the prosperity, but the economic existence, of large tracts depends. (pages 124-125, underlined emphasis mine)

These two paragraphs help understand the ‘objective’ rationale for exclusion of interprovincial water disputes from the federal court’s jurisdiction. The Committee’s rationale had an entirely different basis of a techno-legal nature. The Committee believed that resolution of water disputes that were transboundary in nature had not been satisfactory through rule-of-law procedures. The convention of ‘common law rights’ used in water governance posed complex challenges for laws predicated on private property rights.⁶² Further, while legal rights could be addressed by courts, water could not be treated along the lines of appropriating it with private proprietary interests. The debates did not include any further elaboration of this rationale and logic; the Committee clearly ruled out legal procedures to settle the disputes. Instead, it recommended deliberative approach using institutions such as the Interprovincial Council.

In the immediately following paragraph, reproduced below, the Committee moved to discuss the set of arrangements in Articles 130-134 in the GoIA 1935, subsequently resurrected in the IRWDA 1956. The Committee favored federal control over water, but for the reasons discussed earlier, it had to accept the provincialization of water. Provincialization of waters is tantamount to treating water with some kind of private proprietary rights, albeit by state actors. But when water cuts across territories (provinces and/or Princely states), provincialized regime might lead to ‘most unfortunate consequences,’ which one can surmise to be those we witness now –economic losses, prolonged litigation, escalation of conflict, politicization, etc.

⁶² This complexity is much more challenging, for water is fluid or to be precise, ‘nonfugitive’ in nature, especially in the context of transboundary rivers, and thus common law rights are not appropriate. Water becomes a semi-commons resource where its property rights need to be understood as a hybrid of common and private property rights. See Smith (2008), for an extended discussion. These implications are discussed in further detail in the next chapter.

226. We do not think that it would be desirable, or indeed feasible, to make the control of water supplies a wholly Federal subject; but, for the reasons which we have given, it seems to us that complete provincialization might on occasion involve most unfortunate consequences. We suggest, therefore, that where a dispute arises between two units of the Federation with respect to an alleged use by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggrieved unit should be entitled to appeal to the Governor-General acting in his discretion, and that the Governor-General should be empowered to adjudicate on the application. We think, however, that the Governor-General, unless he thinks fit summarily to reject the application, should be required to appoint an Advisory Tribunal for the purpose of investigating and reporting upon the complaint. The Tribunal would be appointed *ad hoc*, and would be an expert body whose functions would be to furnish the Governor-General with such technical information as he might require for the purposes of his decision and to make recommendations to him. Such recommendations, though they would naturally carry great weight with the Governor-General, would not necessarily be binding on him, and he would be free to decide the dispute in such manner as he thought fit. We think also that provision should be made for excluding the jurisdiction of the Federal Court in the case of any dispute which could be referred to the Governor-General in the manner which we have suggested. We should not propose that the powers of the Governor-General should extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another. With this limitation we believe that the plan would be a workable one, and that it could not reasonably be regarded as inconsistent with the conception of Provincial Autonomy or with the principle that outside the federal sphere the States' relations will be exclusively with the Crown. (p.125, underlined emphasis mine)

The Committee selected a path of discretionary 'arbitration' by the Governor-General over adjudication in a federal court, or any court, as a legal route could not be relied on to yield satisfactory outcomes. The recommendations of the Committee were the basis for Articles

130-134 of the GoIA 1935. The similarities of this with the IRWDA 1956 can be clearly noticed. The Governor-General could appoint an 'Advisory Tribunal' to help with technical and legal issues. But the Governor-General was to be vested with absolute powers. This is where I believe the 'objective' rationale of the Committee acquired the color of a technology of imperial state. The Governor-General was not bound to appoint the commission (or tribunal), nor were the recommendations of the commission binding. The exclusion of these matters from a federal court further facilitated this absolute authority of the Governor-General.

We can perhaps interpret provisions of alternative mechanisms like an ad-hoc tribunal on the grounds of water's exceptionalism. Moreover, exclusion from the federal court's jurisdiction could be on the grounds of preserving the sovereign status of the Princely states. But it is probably naïve to dismiss imperial interests at work in conceiving of the absolute and unbinding discretionary authority of Governor-General. The record of interprovincial disputes in colonial rule does not support a benign view, however. The British Empire has always engaged with interstate water disputes as political problems and dealt with them accordingly. The decisions are considered prejudiced and the solutions, unjust. These arrangements can perhaps be justified for interprovincial (federated states) disputes, but cannot be applied for the putatively sovereign Princely states. This is what the Committee was trying to balance, the line between the idea of provincial autonomy and the principle of States' relations in the Crown's (not Government of India's) exclusive domain *outside the federal sphere*. The Committee's objectives at that juncture were certainly to sustain the subsidiary relation with the Princely states and perpetuate paramountcy, an accusation rightly leveled by the Chamber of Princes.

The case of the Krishna dispute discussed in the next chapter highlights these prejudices and the politics between the Princely state of Mysore and the presidency of Madras. The first Krishna Water Disputes Tribunal (KWDT-I), headed by Justice Bachawat, also presents interesting evidence about how the British government's approach to interstate matters had been arbitrary, and a matter for arbitration (1973, p.96). The report cites an interprovincial correspondence in 1935 over Jamuna river waters and quotes the following excerpt:

...the decision of Government of India in inter-Provincial disputes relating to the distribution of water are based upon administrative, and not legal, considerations. Each case must therefore be taken separately and no decision can operate as a general precedent.⁶³

This 'history of the present' practice of excepting interstate water disputes from the Supreme Court's jurisdiction helps us understand both the fascinating story of the politics of pragmatism for enabling Indian federation and the imperialist mechanism of colonial rule. The latter not only reaffirms D'Souza's (2006) thesis about reproducing colonial and imperial power relations in interstate water disputes, but also underscores its colonial present in much more concrete terms surrounding the practices of Article 262. The history also helps us to reconstruct what forms of rationality are inscribed in these systems of practices. The colonial power's rationality in keeping interstate water disputes outside the federal court jurisdiction is clearly to preserve its imperial interests. Though the overt rationality is 'objective' and attributed to the 'exceptionalism' of transboundary waters, the other rationality driven by the imperative of sustaining the Crown's relations with the Princely states weighed heavily in

⁶³ Page 96, cited from File No. I.R. 45(1) of 1935 Serial No. 6 Government of India, Department of Industries and Labour (Public Works Branch) Civil Works—Irrigation, (Subject—Rejection of the claim of the Government of the United Provinces for compensation on account of the impending decrease in the supply of water from the River Jumna to the Agra Canal as a result of the scheme for the improvement of water supply arrangements in Delhi.

designing the practice. This may not be exactly ‘covert,’ but most certainly was a colonial and imperial rationality.

But it appears that the CA had become ambivalent about its ‘objective’ rationality of unsatisfactory outcomes of legal/court procedures. Dr Ambedkar’s motion for adapting Article 262, replacing the Draft Constitution’s proposals along the lines of GoIA 1935’s Articles 130-134, recognizes the changed context of ‘very many disputes’ and the need for ‘permanent body’ allowing ‘elastic’ action. While giving this brief for posterity, the CA deferred responsibility to parliament through Article 262(1). This reconsidered approach recognized the need for avoiding ‘unsatisfactory’ legal processes. The CA was astute in understanding the evolving and dynamic process of integration and the uncertain nature of the Indian Union under formation. This is clearly driving their thinking while providing for the ‘exception,’ empowering the parliament to exclude interstate water disputes from the jurisdiction of Supreme Court or any other court: “Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction...” [Article 262(2), underlined emphasis mine]. This is, understandably, an advisory, but not a mandatory provision.

Yet Articles 130-134 of GoIA 1935 are resurrected (in more or less similar form) in the IRWDA 1956 provisions, which also provide for the bar on the Supreme Court’s jurisdiction. The resolution also suffers from prolonged litigatory procedures under the tribunals, falling into the precise trap that the constitutional framers feared. The prescient proposals of the CA clearly lost their salience over time and degenerated into lengthy legal procedures. I explore the history of these present practices in the following section drawing on Indian parliament debates in both houses, Lok Sabha and Rajya Sabha – the lower and upper houses respectively.

3.3. The IRWDA 1956: Priorities of the parliament

The IRWDA bill was introduced in 1955 in the parliament along with two other important bills, the States Reorganization bill and the River Boards bill, with all of them becoming acts in 1956.⁶⁴ The concurrent momentum of the bills had an influence in shaping the IRWDA 1956.⁶⁵ The IRWDA bill was entrusted to a Joint Select Committee of the two houses chaired by Gulzarilal Nanda, the Minister for Planning, Irrigation and Power. In the Joint Committee's report (1955), the Statement of Objects and Reasons of the Act begins with the following:

Past experience has shown that [interstate] water disputes have not been frequent and there is not likely to be enough work to justify a permanent Tribunal. It is accordingly proposed to provide for the constitution of an *ad hoc* Tribunal, as and when necessary. (underlined emphasis mine).

This essentially set the tone and course for the debates surrounding the bill. The premise of “no frequent interstate disputes” squarely contradicted the premise of the CA, while deferring any legislation to the parliament through Article 262. The CA had presumed that there might be ‘very many disputes’ and that there would need to be a ‘permanent body’ to deal with these. And the measures proposed by the Draft Constitution – a presidentially appointed commission arrangement – were too stereotyped, hide-bound, and unsuitable. Yet the IRWDA bill adopted precisely the same arrangements. Nanda's Committee relied on a ‘past experience’ of relatively short duration, the seven years since independence when the constitution had come into force. This suggested a visionary schism between the

⁶⁴ Then the “Interstate Water Disputes Act,” the term ‘River’ was introduced much later through the amendment of 2002 (Act 14 of 2002).

⁶⁵ Incidentally the IRWDA bill was introduced first in the Rajya Sabha, which was an exception at that time and attracted much debate from the members in Lok Sabha on account of order and privilege.

constitutional framers and the parliamentarians. Nanda also reminded the parliament members about sections 130 to 134 of GoIA 1935, and observed:

The procedure laid down in sections 130 to 134 of the Government of India Act, 1935 is also connected with this subject [interstate water disputes], but it proved to be very cumbersome. This was the position in earlier years. We had no power at all to intervene in disputes and to bring about their settlement. (Rajya Sabha Debates, 9 September 1955, p. 2584, underlined emphasis mine)

Nanda and other parliament members were aware that the GoIA 1935 had not allowed for any intervening power to the then-government of India. As I discussed above, the power was primarily vested with the Governor-General, the imperial state's representative. Interestingly, Nanda refers to colonial times as 'we,' without differentiating between colonial government and the parliament of an independent India, while commenting that there was no power to intervene in earlier times. His notion of historical continuity between the colonial state and the parliament is interesting. It could be attributed to this positionality for the unsuspecting assumption about the exclusion as a technology of imperial state. The parliamentary debates had not engaged with such a perspective or possibility. However, the deliberations discussed various other issues: whether water should continue as a state subject, the bill's overlaps with the RBA bill, the potential role of the interstate council under Article 263 for resolving interstate water disputes, etc. But the key issue of the deliberations remained the contentious clause 11 of the IRWDA, which bars the Supreme Court's jurisdiction over interstate water disputes.

3.3.1. The bar on the Supreme Court's jurisdiction: the contentious Clause 11

Clause 11 of the bill barring the Supreme Court's jurisdiction received plenty of attention from the parliamentarians. Akbar Ali Khan, representing Hyderabad, argued that the clause

violates the constitutional provisions related to the Supreme Court's jurisdiction under Articles 32 and 131 of the constitution. He favored a constitutional amendment to alter Article 262's provisions to avoid endangering and compromising the Supreme Court. Interestingly, some other members argued that the jurisdictional bar could hurt federalism, and could be compromising states' rights to appeal. If the disputes were to get referred to a central-government appointed tribunal, the states would be at the mercy of the central government. Thus, from this viewpoint their right to act on their own and seek redressal before Supreme Court was curtailed.

The parliament recognized Clause 11's potent force to compromise the Supreme Court's authority. The discussion veered into the constitutional and legal arenas to interpret it as an enabling provision without challenging the Supreme Court. Jaspal Roy Kapoor, who was also part of the CA, gave his rationale in support of this interpretation:

The question then arises, why should we have clause 11 in this Bill in its present form, for it might be argued, as it has been, that it is inconsistent with Article 136 of the Constitution. Not at all, Sir. Clause 11 only says that the order of the tribunal shall be final, and 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 this Act. This means that ordinarily the order of the tribunal shall be final, and as of right, it will not be open to any State to go in appeal, against the order of the tribunal, to the Supreme Court. But then, so far as the Supreme Court is concerned, it is open to it to grant special leave under article 136 to appeal against that order. So obviously, Sir, there is a great distinction between the State having a right and Supreme Court having a discretion in the matter. Therefore, I submit, that clause 11 is not inconsistent with article 136 of the Constitution, but it is only subject to article 136, and only in rare cases, where it appears to the Supreme Court that great injustice has been done to any

State, that it will come to the aid of that particular State so adversely affected. (Rajya Sabha Debates, 12 December, 1955, p.2224, underlined emphasis mine).⁶⁶

This interpretation found agreement with many members. Clause 11's bar did not necessarily mean that the tribunal was a parallel institution to the Supreme Court; it was meant to operate within the jurisdiction of the Supreme Court, but at its own discretion. However this was not meant to be so, as further pronouncements of Nanda and Hathi, the Ministers in charge of the bill, clarified. They argued that the bar works in its true sense and strictly prohibits the Supreme Court's jurisdiction. The clause's primary and essential purpose was to provide finality in dispute resolution and avoid delays due to litigation, as often happens in a court of law. In making this argument for avoiding litigation, they were echoing the 'objective' rationale of the colonial constitutional reforms debates, but in a different context where there was no absolute discretionary power granted to any individual or institution. The underlying presumption of this arrangement was that the tribunal would not, unlike a court of law, allow litigation. This explicit proclivity for a tribunal kind of arrangement was with the intent for expedited resolution. This was further reinforced by the proposal for single-person tribunal instead of one with multiple judges, as was the norm.

Expeditionousness of decision-making with finality and no litigation process had been the overriding concern for the Ministers-in-charge of the bill in both the houses, Nanda and Hathi respectively. But this was under an assumption, which was perhaps true for those times, that there were not many interstate disputes thus far to be overly concerned. These assumptions

⁶⁶ Article 136: Special leave to appeal by the Supreme Court.

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

would not be same for current times, the history of which has witnessed the emergence and recurrence of many of these disputes. In Rajya Sabha, Hathi cogently enunciated the considerations driving the bar of jurisdiction and the architecture of the IRWDA 1956:

Although there is a provision under Article 131, how many States during these seven years have gone to the Supreme Court for - adjudication of their rights? I would be very much pleased to find a single instance where a State has gone to the Supreme Court. It is all well and good to say that the doors of the Supreme Court are closed against us, but let us be practical. I do not think during the seven years any particular State has gone to the Supreme Court. That does not mean that if there is a dispute there should not be a remedy. But what that remedy should be is only a matter to be considered. The remedy which was considered a sufficient remedy, adequate remedy and a[n] expeditious remedy by the CA was that the Parliament should be empowered to have a law which would set up a machinery to settle disputes, and not that the matters may go to a court of law. Otherwise there is no meaning in enacting article 262. So when we say that article 262 is meant for settling disputes, it is not with a view to shut the doors of the States, compelling them to come to this machinery for the recourse, but it is with a view that such a machinery would be able to settle the disputes more speedily and more expeditiously than it should be possible to be done under normal procedure of the Supreme Court. Hence the necessity of having the tribunal. (Rajya Sabha Debates, 12 December, 1955, p.2258-9, underlined emphasis mine).

Hathi did not negate Jaspat Roy Kapoor's interpretations about appeal to the Supreme Court under Article 136, but he ruled out such possibility. The IRWDA 1956 was meant to remove any further appeal to the Supreme Court, but the real purpose was to avoid litigation processes. So it was clear that expeditiousness and finality in interstate water disputes resolution were the rationale for the Supreme Court's jurisdictional bar in IRWDA 1956. Though Hathi assumed and hoped that states would not go frequently to courts, he felt that allowing adjudication by courts would let the 'psychology' of litigation pervade among the

states. As long as the 'window of remedy' was open for the next level of appeal, there was this danger.⁶⁷

This rationale was not entirely satisfactory for other members; they instead saw the jurisdictional bar as fundamentally contradicting legal principles of original jurisdiction of the Supreme Court. Nanda and Hathi had to repeatedly rely on Article 262's constitutionally mandated provision for justifying it, in both houses of parliament. These references to Article 262 did not go beyond citing the provisions. There was no historical reference to its origins and probable intentions of the colonial state. There was practically no-one who questioned the very rationale of Article 262 (2) that specifically suggested the jurisdictional bar besides Dr Lanka Sundaram and Ali Akbar Khan, who called for a constitutional amendment if necessary (Lok Sabha Debates, 11 August 1956, p. 3004).

Nanda and Hathi favored the arrangement of a tribunal over courts to achieve expeditiousness and finality in resolution. They believed tribunal arrangement would avoid litigation, without necessarily discussing the precise operational mechanisms of the tribunal. Their presumption that the tribunal would function differently to generate expedited outcomes was neither substantiated nor elaborated. While there was no doubt that tribunal proceedings could also degenerate to court proceedings, the tribunal mechanism was believed to avoid litigation across-the-board. Jaspal Roy Kapoor keenly supported litigation avoidance procedures and discussed the merits of adjudication by tribunal:

⁶⁷ Not all members of the Parliament shared this optimism with interstate relations. Some members made references to the parochial interests of individual states observed during debates over the State Reorganization Bill, which was being discussed simultaneously. They warned that these narrowly conceived parochial interests may defeat the purposes of the bills such as the River Boards Bill and the Interstate Water Disputes bill. E.g., see comments from L N Mishra representing Darbhanga/Bhagalpur (Lok Sabha Debates, 11 August 1956, p. 2977-8).

I attach, of course, considerable importance to a case being decided by a court of law, but on that account, I cannot rule out that advantages that accrue from a decision given by a panchayat or a tribunal, where things can be decided more on the basis equity and good conscious rather than on the basis of legal quibbling only. I, therefore, submit that it is good and proper that disputes between States should be referred to a tribunal and not to a court of law. A tribunal, while exercising its judicial discretion and doing things in its judicial wisdom, should not feel fettered by any legal formalities and formalities of technical rules and regulations. (Rajya Sabha Debates, 12 December 1955, p.2225).

Kapoor's reference to *panchayats* was in response to another former CA member, Biswanath Das, known for his predilections favoring deliberative processes over legal ones. Das's objection to the bar on the Supreme Court's jurisdiction was contrary to his preferences for avoiding legal and procedural encumbrances. These allusions to *panchayats* and the subsequent emphasis on equity consciousness and judicial discretion characterized the conception of resolution mechanisms by the lawmakers of that time. In the words of R C Gupta, "... because in a court of law, we all know that the proceedings are unduly protracted and the disputes may last very long. The tribunal would have one advantage that it would be seized of one case and the matter would be decided very soon." (Rajya Sabha Debates, 12 December 1955, p.2233). Govinda Reddy, another member of the Joint Committee, also defended this approach on account of convenience and stature:

After all, this is not a question of individuals, a dispute arising between A and B in regard to life or property. If that were so, we could agree that it is a curtailment of power. This is a question not between individuals, but between States... This will be a question mostly of facts, whether the case of that State is right or not. There will be very few documents and it will be a question deciding on facts relating to the matters in dispute... The difference between a tribunal and a court is only with respect to procedure. In the courts, there will be a prescribed procedure which will have to be followed. It will have to take that tortuous course whereas a

tribunal is free to prescribe its own procedure, or the legal enactment which appoints such a tribunal can prescribe the procedure. The procedure is short, speedy and simple. (Rajya Sabha Debates, 12 December 1955, p.2240-1, underlined emphasis mine.)

The Supreme Court's jurisdictional bar should not be construed as curtailing powers or rights of the states for approaching the Supreme Court. But it was an alternative way of engaging with interstate disputes, different from those between individuals. Further, the tribunal was opined as essential to avoid the tortuous litigation process of courts and allow judicial discretion in procedures as well as decision making. Another presupposition was that there would be 'very few documents' to study and the tribunal would have to work around the matters of rights rather than quantities and allocations. Considering the vast amount of information and data that is being produced before today's tribunals, this was indeed misguided. Besides, the tendency to politicize and turn the tribunals' adjudication into a litigatory battle field was not something that the parliamentarians considered as a possibility. The references to sub-national 'parochial interests' was a brief trespass from the simultaneous debates over the states' reorganization, but did not attract substantive attention from the members. And 'the questions will be mostly of facts' were entirely underestimated and uninformed notions of times to come, where the legal battles would be colored and driven by politics outside the walls of tribunals. This depoliticized objectivity had been the driving factor of the parliamentarians' preference. The tribunal arrangement was believed to reduce delays and keep the process 'short, speedy and simple.' Hathi further asserted this view: "...we want these disputes should be settled, as far as possible, either by arbitration, or tribunal, or *panchayat*, or by somebody whom you trust, or to whom you can handover the matter for an amicable settlement." (Rajya Sabha Debates, 12 December 1955, p.2254, italics in original).

This keen desire to depart from regular legal procedures could be discerned from the prolonged debates over the structure and composition of the tribunals. The ministers-in-charge of the bill were insistent and adamant on having one-person tribunal. In spite of strong objections and vehement argumentation by members, Nanda and his deputy, Hathi stuck to the structure of single-judge tribunal. Several members objected to this on various grounds. Interstate riparian matters were highly complex and affect large populations. Entrusting such matters to single judge was far-fetched and most unfair. This amounted to vesting vast powers to one person, especially while barring appeal to any court. Ramachandra Reddi, a member of the Joint Committee, recorded a minute of dissent against having a single-judge tribunal. Nanda and Hathi initially cited less availability of judges at that time, but repeated objections from members forced them to explain their intentions in the interest of expedited adjudication and reduced delays.

IRWDA 1956 had gone through several amendments later (see Annex C for the full text of the IRWDA 1956 and Annex D for an overview of its amendments). There had never been a comprehensive debate in the parliament over these amendments, nor did the larger question of the Supreme Court's jurisdictional bar attract any attention. These amendments were mostly to tweak and make minor legal improvements for enhancing the effectiveness, often in response to the perceived loopholes posed by recurring interstate water disputes. Two amendments were substantive and relevant to the discussion here. The amendment in 1968 changed the composition of the tribunal from that of a single judge to three persons, which departs from the structure of the legislation of Nanda and Hathi's conception – to provide for judicial discretion and expeditious disposal. The other important amendment was in 2002 after the Sarkaria Commission (1988) submitted its report on center-state relations. This amendment was essentially aimed at reducing delays and giving force to tribunal awards. The

latter in particular was achieved through making tribunal awards equivalent to Supreme Court decrees. This both reemphasized the exceptionalism associated with the interstate water disputes and complicated the exception – the jurisdictional bar of the Supreme Court. The amendment was, effectively, supposed to lend support to the Supreme Court’s jurisdictional bar by giving unequivocal legal force to tribunal awards for forcing states’ compliance in the awards. Naturally, it invited deliberations over the likely conflict and potential compromise of the Supreme Court’s authority. But this insistence on making tribunal awards equivalent to Supreme Court decrees came during a flare-up of the Cauvery dispute, a drawn-out disagreement even long after the tribunal was set up. The dispute had a history of state governments defying the tribunal’s interim awards and other directives. Constantly running in the background, the Cauvery dispute had an impact on these propositions. Further, there was a growing realization of how politicization of interstate water disputes was leading to recurrences and delays (Chokkakula 2014). Those who favored making tribunal awards have the same force as Supreme Court decrees argued for it on the grounds of deescalating the political nature of interstate water disputes:

... politics outweigh water disputes. If the Centre is governed by a party and the State is governed by another party which is in opposition at the Centre – it is because we have a multi-party system – implementing the tribunal’s decision is very difficult... In Cauvery waters dispute...it took 12 years to get an award. That award is not implemented even today. Why is it so? It is because of political considerations...That is why I charge the present Government because it is reluctant to bring a legislation or even make an amendment to the Water Disputes Act incorporating the recommendations of the Sarkaria Commission that the award passed by the Water Disputes Tribunal should have the effect of a Supreme Court order. (Varkala Radhakrishnan, Lok Sabha debates, 27 July 2001, p.325).

Thus, the history of responses to the ineffectiveness of resolution mechanisms demonstrates repeated efforts to reinforce the jurisdictional bar, and at the same time increase the legal force of tribunal awards. As of now, interstate water disputes have become increasingly untouchable for the Supreme Court. However, a series of factors contributed to a chasm between the two institutional processes and preventing confluence or complementary roles. These include all the maladies highlighted earlier: competitive states, politicization and the nexus between electoral politics and interstate water disputes, and constitutional ambiguities in implementation of awards (Chokkakula 2012, 2014). Clearly the legal responses failed to accommodate the changing nature of state and politics. Instead, as my earlier analysis suggests, the discourse remained deeply legalistic and displayed a visceral reluctance to engage with politics.

3.4. Delineating disconnects: Historicizing the practices of the present

The genealogy of Article 262 and the history of its operationalization in post-colonial times allow for the unravelling of interesting aspects of buried or rather ‘drowned’ epistemologies (cf. Willems-Braun 1997) of the Indian state and state-making, and its postcolonial condition. Some key historical disconnects mark the ideological framing and implementation of interstate water dispute resolution mechanisms.

Under the colonial rule, the federal court’s jurisdictional bar over interstate water disputes has been deployed for two possible reasons. One, it is an outcome of pragmatic politics necessary to make the All India Federation work, with the British Indian provinces and semi-sovereign Princely states as part of the federation. But this can also be construed as part of the imperial project. The All India Federation itself is also an imperial project for continued control over India as a dominion of the British Empire. Two, the Joint Committee on Indian Constitutional Reforms uses an ‘objective’ rationality of unsatisfactory court procedures for treating

transboundary waters as an exception to courts of law. Instead, it prefers discretionary arbitration power vested with the Governor-General. This absolute power is evidently a technology of the imperial state for perpetuating power over subsidiary political units.

The CA recognized the changed context and changing federal relations, and defers the responsibility of appropriate legislation to the parliament under Article 262. They rejected the provisions in the Draft Constitution drawn from the GoIA 1935. The constitutional framers, however, provided for a bar on the Supreme Court's jurisdiction as an enabling provision. While we can arguably speculate about their concerns over the volatile and uncertain conditions of the Indian states' integration, the CA's brief leaves a disconnect surrounding the precise reasons for abandoning the Draft Constitution proposals and framing Article 262 in its current form.

This disconnect manifests not only in ideologically framing the need to continue with the jurisdictional bar, but also in operationalizing Article 262 through the IRWDA 1956. The constitutional framers chose to reject sections 130-134 in the Draft Constitution on the grounds that there was a need to rethink these arrangements. Their belief about 'very many' disputes and the need for a permanent mechanism appears more prescient than the later parliamentarians' presumptions. The CA chose not to continue with the ad-hoc arrangements, as provided in the Draft Constitution, but preferred a 'permanent' arrangement enabling 'elastic' action. But the parliamentarians chose instead to contradict the likely 'very many' disputes, based on rather weak and feeble grounds. Based on a record of a relatively short time frame of seven years, the parliamentarians assumed the disputes would rarely resurrect the 'colonially' rooted ad-hoc arrangements from the GoIA 1935 and later the Draft Constitution. Their intentions were for good reasons, though, anticipating expedited and final solutions without protracted legal procedures while concomitantly allowing for adequate

discretion. In going back to those arrangements, they had not considered the likelihood that the provision of the Supreme Court's jurisdictional bar could be advisory, or at the most an enabling ('may'). Instead, they chose to take it as 'given' and mandated by the constitution, as it helps their project of providing swift and final resolution for the 'rarely occurring' disputes.

In hindsight, the notions of 'rare' disputes are clearly naïve and ill-informed. Interstate water disputes are growing, with frequent emergence and recurrence. The lawmakers clearly misjudged the future course of interstate water disputes, both their nature and extent. Their evidently inadvertent and innocent decision to resurrect and adapt the colonially-rooted arrangements did not produce their intended outcomes. Instead these arrangements have contributed to intractable impasses and the tendency towards permanent litigation, with the Supreme Court's hands tied.

Clearly, there is little doubt about the need for permanent arrangements, whether the adjudication happens through a tribunal body or not. Indeed, the National Water Policy's thinking in terms of 'permanence' is perhaps in the right direction. However, that it has to be a permanent tribunal is something that needs deliberation. This is where we encounter another disconnect. Nanda and Hathi have remained insistent on pursuing deliberative and discretionary approaches to resolving water disputes, which is the basic rationale for having the ad-hoc arrangement of tribunals, and avoid the litigatory and adversarial procedures of a court. However, the adjudication by tribunals appears to have degenerated precisely into this legalistic mode over time. Several conversations with practitioners involved in the adjudication of interstate water disputes suggest that it is indeed so. This is a crucial element in interstate water dispute resolution; as the aphorism says 'the devil is in the details.' I elaborate this below.

3.4.1. Discretionary and deliberative vs. litigatory and adversarial adjudication

The Supreme Court's jurisdictional bar largely drives the debates about what needs to be done with Article 262 and its pedigree, the IRWDA 1956. Iyer has been consistent in arguing that there is no need to 'rock the cart.' His view is that Article 262's jurisdictional bar is only advisory and cannot be construed as having the force of a 'shall.' Hence an amendment to the IRWDA 1956 allowing for an appeal before the Supreme Court is sufficient. He does admit that there is every possibility that every dispute may end up with an appeal to the Supreme Court. But this has an advantage of providing the necessary *finality* for the award in order to ensure implementation and compliance by states (Iyer 2002, 2009). The eminent jurist Fali Nariman holds a consistent position that interstate water disputes must be brought under the Supreme Court's jurisdiction. He favors interpreting Article 262's jurisdictional bar as advisory, not enabling. In a note submitted at the request of the Punchhi Commission on Centre-State relations (2010), and in an earlier (2009) paper, he proposed bringing interstate water disputes directly under the jurisdiction of the Supreme Court. This requires one simple step – repealing the IRWDA 1956. By repealing the IRWDA 1956, adjudication of interstate water disputes by default falls under the Supreme Court's jurisdiction, by virtue of articles 131 and 145 of the constitution. These articles give exclusive powers to adjudicate interstate matters and make rules for adjudication, respectively.

But these proposals are again driven by the interests of providing *finality* to the resolution of disputes. This is perhaps a misplaced emphasis. Resorting to direct Supreme Court jurisdiction may lead to the trap that the parliamentarians wished to avoid – to let states to engage in litigatory procedures for resolving interstate water disputes. So it is not only the force of finality for the decision, but also the process of arriving at the decision in an expeditious manner that is also important. The parliamentary lawmakers of IRWDA 1956

emphasized deliberative processes allowing judicial discretion. This has to remain an important consideration. On the other hand, the ‘objective rationality’ of transboundary water-exceptionalism, cited by the Joint Committee on Indian Constitutional Reforms (1934), cannot be ignored. This aspect of exceptionalism at the intersection of water and law is likely to offer better modes of ensuring deliberative and discretionary outcomes. It is also true that in most cases, states approach the Supreme Court in any event, a result of noncompliance or ambiguities in the implementation of tribunal awards. In these cases, tribunals cannot be constituted, nor can the Supreme Court intervene. Unfortunately, the Supreme Court then becomes a de facto implementation agency in order to redress grievances of noncompliance or failure in implementation. But in spite of the Supreme Court directly intervening in some cases, as in the recent Cauvery dispute of 2012-2013, it did not help in making effective compliance by the states (Chokkakula, 2014).

This ‘devil in the details,’ the practices and procedural issues, are crucial. For some time, Nariman has been emphasizing this challenge. He is critical about the functional procedures of tribunals. He highlights the procedural lacunae in tribunal proceedings and argues these have implications for the delays and lack of seriousness towards the awards (Nariman 2009). In his note to the Justice Punchhi Commission on Centre-State relations (Nariman 2010), he made comprehensive arguments against the manner in which tribunals function. Herein, he called for a larger shift in approaching the adjudication of interstate water disputes from the current ‘adversarial proceedings’ to those of ‘investigative proceedings.’ He recommended that adjudication by the Supreme Court can follow the American model of adjudication, in which the court appoints a Special Master to conduct evidentiary hearings, followed by clarification of legal questions by each party, and then endeavors to arbitrate a solution agreeable to the parties of the dispute. Nariman recommended changes in the tribunals’

procedural functioning in minute detail. E.g., tribunal members should sit at the same level with the parties (unlike now, where members of tribunal sit on rostrum at a higher level, similar to court proceedings) and caucus between parties with only minimal participation of lawyers.

When he calls for these changes, he is in fact referring to the practice of litigatory and adversarial proceedings in the currently functioning tribunals of Cauvery and Krishna, contrary to the vision of deliberative proceedings with judicial discretion. How has this degeneration to litigatory and adversarial proceedings taken place? It appears the proceedings in the Bachawat tribunal followed the ‘investigative’ and deliberative procedure that was originally envisioned by the parliamentarian lawmakers. Nariman recalled these proceedings of the Bachawat tribunal with the benefit of advice from another Senior Advocate, Mr. Javali, who had appeared before the Bachawat tribunal, and now appears before KWDT-II for the state of Karnataka. My own interactions with Javali during the KWDT-II proceedings confirm this degeneration of proceedings to litigatory and adversarial modes, which act only to prolong the deliberations. Javali confirmed that these delays are attributable to the increasing role of politics and politicization in interstate water disputes.

3.5. Conclusions

The genealogy of Article 262 and the Supreme Court’s jurisdictional bar on interstate water disputes, tracing back to constitutional reforms in early 1900s, has helped clarify several ambiguous issues associated with this bar. Tracing it with the historical understanding of the IRWDA 1956 has revealed the historical disconnects that have led to unravelling rationality in the degenerated current forms of knowledge, practices, and procedural challenges. The historical analysis has generated an opportunity to make several conclusive statements about several questions posed at the beginning of this chapter. I discuss these below.

3.5.1. Explaining the exception: The jurisdictional bar on interstate waters

The Supreme Court's jurisdictional bar is an outcome of certain historical and political contingencies of state and state-making in India. It began as a technology of the imperial state to enable perpetuating its power over disparate and hybrid 'sovereign' Princely states across the Indian sub-continent. The jurisdictional bar on interstate water disputes had its origins in the British government's plans to consolidate its rule over the Indian subcontinent, which involved a series of structural changes situated around the early 20th century. These include decentralization of functions towards making India a dominion of the Empire and the integration of a large number of Princely states in subsidiary alliances as part of the all-India federation of states. Montagu-Chelmsford reforms were followed by the GoIA 1919, an important milestone in this decentralization process that mooted a federated dominion that required governance mechanisms for interprovincial water resources. The Montagu-Chelmsford report included the imperialist discretionary arrangements in its elementary form. But the 'objective' rationality that enabled the jurisdictional bar as part of an imperial project came from the report of the Joint Committee for Indian Constitutional Reforms (1934), the basis for the GoIA 1935. The committee claimed that the record of resolving transboundary water conflicts through the procedures of courts of law is unsatisfactory. The disputes are better resolved by conferences, deliberations, and discretionary decision making. This 'objective' rationality of 'water-exceptionalism' has been used to propose keeping the management of interprovincial waters out of the federal court's jurisdiction in the GoIA 1935. This aided two political projects simultaneously: one, to enable absolute and discretionary power vested with the Governor-General, head of the imperial state; two, to assuage the supposedly 'sovereign' Princely states' concern over their sovereign status by excluding them from the federal court's jurisdiction. Even though the all-India federation of

states had not materialized in its complete form, it allowed the imperial state to perpetuate its power over the Princely states. These 'forms of rationality' inscribed in current practices under Article 262 unequivocally confirm the 'colonial present' presented in D'Souza's (2006) thesis about the underlying colonial and imperial power relations in the production of interstate water disputes.

The CA chose to reconsider the adapted forms of GoIA 1935 provisions in the Draft Constitution for interstate water disputes. The CA rejected the ad-hoc arrangements as inappropriate for the changed and changing political context of the Indian Union and suggested a permanent mechanism, as they anticipated 'very many' disputes. The CA deferred the responsibility of drawing up legislation to the later parliament, ostensibly to allow consolidation of the Indian Union. It also provided the enabling provision of the Supreme Court's jurisdictional bar considering the uncertain shape of the union (or federation) and the likelihood of continued assertions of individual sovereignties.

3.5.2. IRWDA 1956: Disconnected and degenerated practices

However, the parliamentary lawmakers of the IRWDA 1956 approached the legislation with premises contradicting those of the constitutional framers. They relied on the record of nascent federation of seven years' duration to argue that interstate water disputes would be rare, and ad-hoc measures similar to those in the GoIA 1935 would suffice. They had their own rationality to continue with the bar on Supreme Court jurisdiction: to provide expeditious and final resolution, allowing judicial discretion, and avoiding lengthy litigation in the resolution of interstate water disputes. The subsequent history of amendments reinforced the trajectory of parallelity to the Supreme Court, and avoided confluence and complementarity. This ultimately led to rigid and inflexible tribunal arrangements and the

Supreme Court's untouchability, contributing to ineffective resolution of interstate water disputes.

Over time, these provisions have proved counter-productive. Interstate water disputes resolution suffers from a variety of maladies that have not been accommodated for: frequent emergence and recurrence of disputes, competitive and contentious state-state relations, a nexus between electoral politics and interstate water disputes, and noncompliance with tribunal awards. Any original vision of swift and final functioning of tribunals has also degenerated, and the tribunals are on the precise course that the lawmakers wanted to avoid: lengthy litigatory and adversarial proceedings. Propositions for bringing interstate water disputes under direct Supreme Court jurisdiction augment the danger of leading states along this treacherous path. At the same time, the 'objective rationality' associated with water exceptionalism and law cannot be ignored. Further, a blanket bar on the Supreme Court's jurisdiction contradicts the basic tenets of law, may compromise the authority of the supreme judicial institution, and lead to the kind of ambiguities that we see in interstate water dispute resolutions. Considering the changed nature of interstate water disputes, however, it is imperative to reconsider the ad-hoc measures and revisit the CA's propositions for 'permanent' arrangements allowing 'elastic' action. This clearly cannot be entirely in the form of legal responses, but has to accompany complementary institutional solutions for mitigation of disputes as well as for implementation of decisions (Chokkakula, 2014).

3.5.3. Princely states and provincialized historiography

The genealogy of Article 262 has established that the 'colonial mode of historiography,' as Singh (1993, 2003) termed it, marginalizes other important narratives such as those emanating from the Princely states. Bringing the Princely states and their power relations to

the center of analysis has proved to be productive in explaining the ‘curious case of exception’ under Article 262. This demonstrates the potential and productive use of juxtaposing the colonial historiography with the rather provincialized historiography of Princely India for making sense of the colonial present and the postcolonial condition of India. This has also helped in clarifying other misconceptions with respect to water management generally. Significantly, water had always been considered a central subject before the GoIA 1919; after that it was made a provincial subject. But this is something that the colonial historiography tells us. It is true that water remained a central subject till GoIA 1919, but it is so only in the British provinces.⁶⁸ It is also true that this distinction does not matter much, considering the unitary nature of state in the British provinces. However, in other ‘provincial’ parts of India, the Princely states, accounting for two-fifths of India, water had always been under the direct management of these states. In fact, the struggles and power tussles between the Princely states and the British government of India was primarily the resistance against the colonial power’s efforts to encroach upon their traditional control over agrarian relations and other economic and cultural resources. Water was always a provincial subject in the parts of India not under the direct rule of the British. More so, water and irrigation had been a community-managed subject in those parts for a long time. The government of the Princely state of Mysore had not had irrigation legislation until 1932, an indication of state’s formal role in water management in Princely states (Vani 1992). The colonial power’s efforts in ‘provincializing’ agrarian resources such as land and water began as part of structural changes for an all-India federation of states well before the GoIA 1919. The integration of Princely states and the simultaneous decentralization within British India

⁶⁸ In a true sense, control over water remained intact with the center even in the British provinces. Irrigation schemes above Rs 50 lakhs investment had to be still approved by the Secretary of State.

required recognition of agrarian subjects as under provincial purview. In return, the Princely states had to give up control over other centralizing subjects such as railways, defense, communications, etc. Tax structures under the GoIA 1935 reflect this: land revenue, taxes on agriculture income, succession and estate duty over agriculture land, etc. were all exclusively state subjects (Seervai 2002).

Chapter 4: A political anatomy of the Krishna river water

dispute: asymmetries, ambiguities and antagonisms

4.1. Introduction

In this chapter, I present a historical analysis of the Krishna dispute. The attempt is to delineate what I call a political anatomy over its history of evolution, focusing on power and the politics shaping its trajectory. The analysis also emphasizes how ecological characteristics of water – its spatial and temporal uncertainties, inequities, and scarcity - reconfigure the power relations and politics in the dispute. It seeks to understand the political ecology of a dispute characterized by complex political-historical geographies and river ecologies, equivocal and ambiguous legal histories, elusive power plays involving a diversity of interests as well as their politics of contestation and mobilization, etc. Such diverse elements makes it a challenging task; but I focus on the politics of contestation, aiming at a narrative located at the intersection of these elements to produce a historical perspective of the conflict's political constitution in its dynamic and evolving sense; more precisely, I will dissect the asymmetries and ambiguities endowed by all these elements, which then contribute to the antagonistic politics between states over Krishna waters.

The goal is an ambitious one considering the limited resources accessible in the public domain, especially those beyond formal narratives of the dispute available in the form of the tribunal award documents. Nonetheless, the tribunal award documents are comprehensive sources of information on the technical and legal aspects of the disputes. The challenge is to construct narratives of politics around these technical and legalist sources. The Krishna dispute offers a particular advantage in comparison to others, for it is the first and only interstate water dispute that has had two tribunals constituted for its adjudication, 30 years

apart – offering a unique opportunity to compare and contrast the evolving and changing nature of the dispute and its driving factors.

I attempt pursuing the historical analysis along the lines of a genealogical analysis, though certainly not in its comprehensive sense. But the effort is to construct a narrative of the dispute as a history of the present, with an emphasis on power and the discourses it permeates. The analysis, however, remains focused on the political ecology of the disputes in order to reveal the sources of power asymmetries and relations. It ventures beyond the social and political sources, and engages closely with spatial and ecological conditions as sources of power asymmetries (Furlong 2006; Paulson, Gezon and Watts 2003; Robbins 2004, 2011).

These nuanced political ecologies cannot be captured by other known approaches for understanding political and social forces, such as the actor network theory (e.g., Latour, 2004) or the assemblage theory (e.g., McFarlane 2009). Instead, I have chosen to use eclectic methods combining genealogy, historical and multiscalar analysis, and other political-ecologist tools at the intersection of politics and ecological principles (Robbins 2003).

The Krishna dispute, though it is the oldest and unique in having had a second tribunal instituted for adjudication, has not been subjected to comprehensive analysis. Information sources in the public domain are restricted to the comprehensive reports of the two tribunals (KWDT-I 1973, 1976; KWDT-II 2010, 2013). This is with the exception of the body of work produced by D'Souza, which includes a book (2006) and publications drawing on the KWDT-I's report. D'Souza's work predates the KWDT-II. My work extends the analysis to KWDT-II and the disputes in the interim after the KWDT-I. My focus of analysis is also distinctly different from that of D'Souza. Her analytical frame focuses on law and social analysis to unravel a particular feature of the postcolonial condition of interstate water disputes: how the colonial and imperial power relations have been transmitted through law

and legal instruments. She argues that the social relations around water in India are constructed and informed by imperial law and power relations - in the forms of colonial law and international customary law, reflected by their internalization in KWDT-I's adjudication of the Krishna dispute. D'Souza's project has been to interrogate the epistemic gaps between capitalist and colonial societies.

My project is more provincial and political, though it builds on D'Souza's analysis of imperial and colonial power relations internalized in the adjudication of interstate water disputes in India. I am interested in understanding the nature and anatomy of conflicts emerging due to the epistemic gaps and other factors contributing to the tenuous nature of transboundary politics: the dynamic sources of power asymmetries, the consequent and continuous reconfiguring power relations, the way these reconstruct the politics of contestation, and the emergence or recurrence of conflicts/disputes. In a way, I pick up the baton from D'Souza, and advance the analysis to understand the emergence and construction of politics and the reproducing transboundary political spaces of the Krishna dispute.

D'Souza's approach and line of inquiry influences my approach in understanding the deeply embedded nature of colonial and imperial power relations in the manifestation of interstate water disputes. The earlier chapter on Article 262 reinforces this deeper postcolonial structural condition of interstate water disputes in fairly unequivocal terms. However, I draw on D'Souza's (2006) work and her sources to explore this dimension of political analysis, and discuss power asymmetries and relations in the making of the Krishna dispute.

With the exception of D'Souza's work, scholarly works about the Krishna dispute and interstate water disputes in India generally suffer from three basic shortcomings. First and foremost, there is far too much emphasis on the settlement of disputes, with little

understanding about the underlying causes and conditions producing them. Second, for their emphasis and also because of the dominant terms in water dispute resolution, these works are primarily legalistic in nature (e.g., Salman 2002). Third, their engagement with specific contextual parameters is limited, instead treating them in a generic sense of transboundary disputes (e.g., Shah 1994, Swain 1998).

I make a deliberate shift from these generic and legalist treatments. Instead, I pay particular attention to the politics and power relations in the history of the dispute's continuing evolution. I focus on the transboundary politics between AP and Karnataka. I organize my analysis over two chapters, this and the following one. Here, I focus on analyzing the formal narratives of the dispute as involving state actors.⁶⁹ In the next chapter, I examine non-state actors and their strategies for political mobilization for engaging with and influencing the formal and legal processes, drawing on my field work in the transboundary spaces of AP and Karnataka. In this first part of the Krishna dispute's analysis, I discuss the specific historical and structural conditions enabling the politics of the dispute. I also investigate the spatial and ecological conditions, and the techno-legal ambiguities contributing to contestations and conflicts between the parties. Politics and politicization of the dispute thrives on power asymmetries historically constructed, uncertain and changing ecological conditions, and techno-legal ambiguities. I take the advantage of the two tribunals' adjudication of the dispute for the analysis.⁷⁰

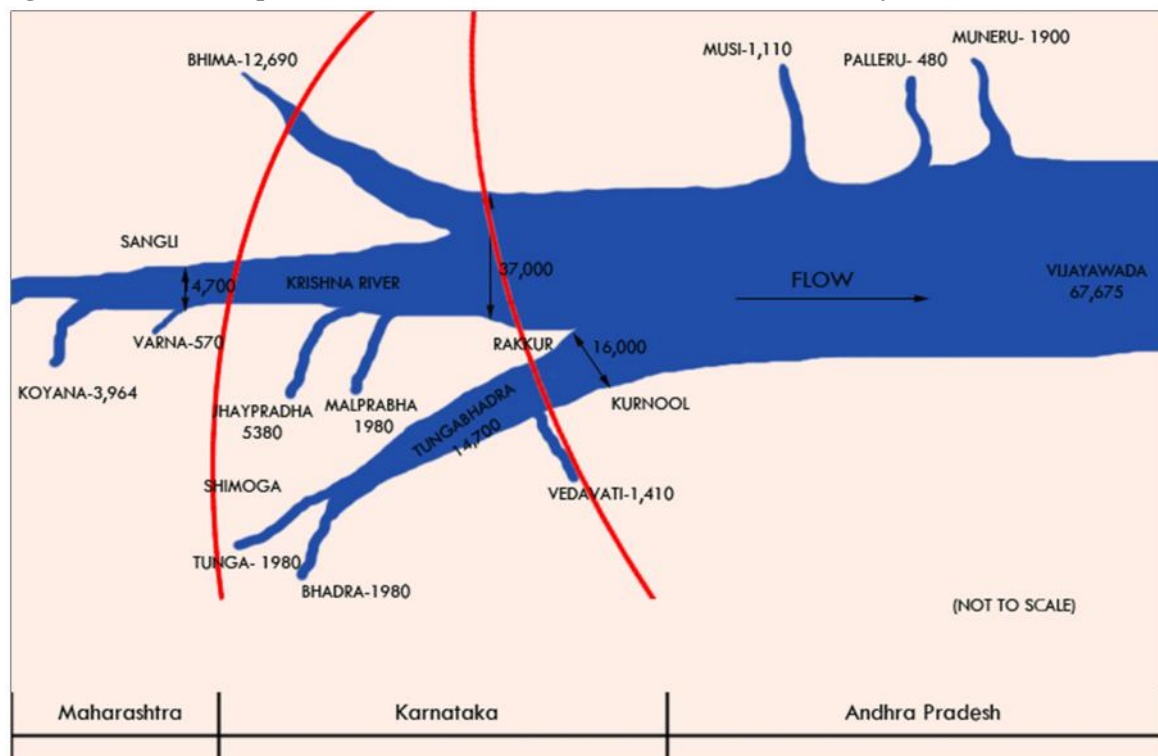
⁶⁹ Interstate water disputes resolution is essentially a statist project: the law for interstate water disputes resolution, the IRWDA 1956, recognizes only state governments as legitimate parties to the dispute. It neither recognizes nonstate actors, nor provides space for articulating their interests/grievances.

⁷⁰ The final award was given in 2010. The tribunal closed the clarificatory hearings under the section 5(3) of the IRWD Act 1956 in August 2013; and, gave its Further Report in November 2013. A point aside, yet relevant, is that the KWDT-II will have to address a recent development – the bifurcation of AP into the two states of Telangana and Andhra Pradesh. The AP Reorganization Act of 2014 mandates the KWDT-II to adjudicate any outstanding issues emerging out of the bifurcation. In their recent submissions to the KWDT-II, the two states

4.2. The political and ecological context of the Krishna river

The Krishna River rises in the Western Ghats near Mahabaleshwar in Maharashtra state and runs across Karnataka and AP states for a total length of about 1400 km before emptying into the Bay of Bengal. On its course, it is joined by number of tributaries. Two tributaries, the Bhima and Tungabhadra, are themselves interstate rivers, the former between Maharashtra and Karnataka and the latter between Karnataka and AP. The schematic flow diagram (Figure 7 below) helps in understanding the hydro-geography of the river. This schematic presentation is a translation of the hydro political geography of the Krishna river basin.

Figure 7: A schematic presentation of the Krishna river and its transboundary context

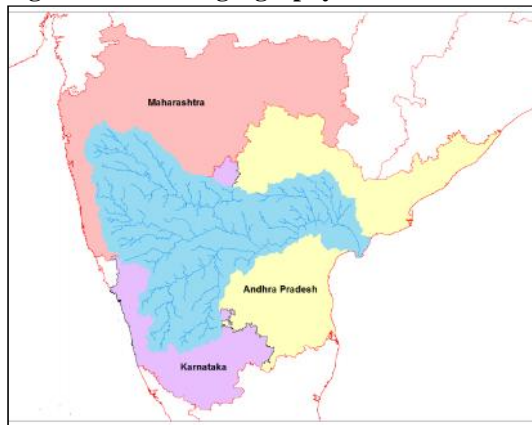


Source: adapted from Rao (1979): 97

refused to resolve the differences amicably and demanded re-adjudication of the dispute in its entirety, not just between the two states. The KWDT-II is in the process of examining these submissions as of now. However, the purpose of presenting these developments is to further substantiate the argument I make at the end of this chapter – the perennial presence of conflict and recurrence tendencies in interstate water disputes.

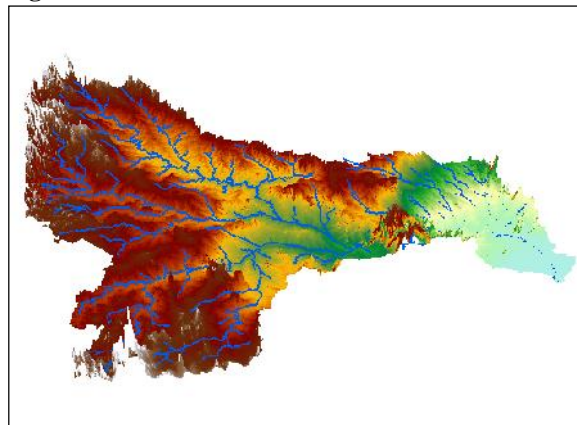
Figure 8 below shows a map with the actual political boundaries of the riparian states and the spread of the river basin across the three states. A three-dimensional schematic presentation of the basin in Figure 9 will help visualize the terrain and the physical geography. The basin is divided into 13 sub-basins corresponding to key drainage units in the basin; the locations of major reservoirs and their respective streams in the basin are presented in Figure 10.

Figure 8: Political geography of the Krishna basin



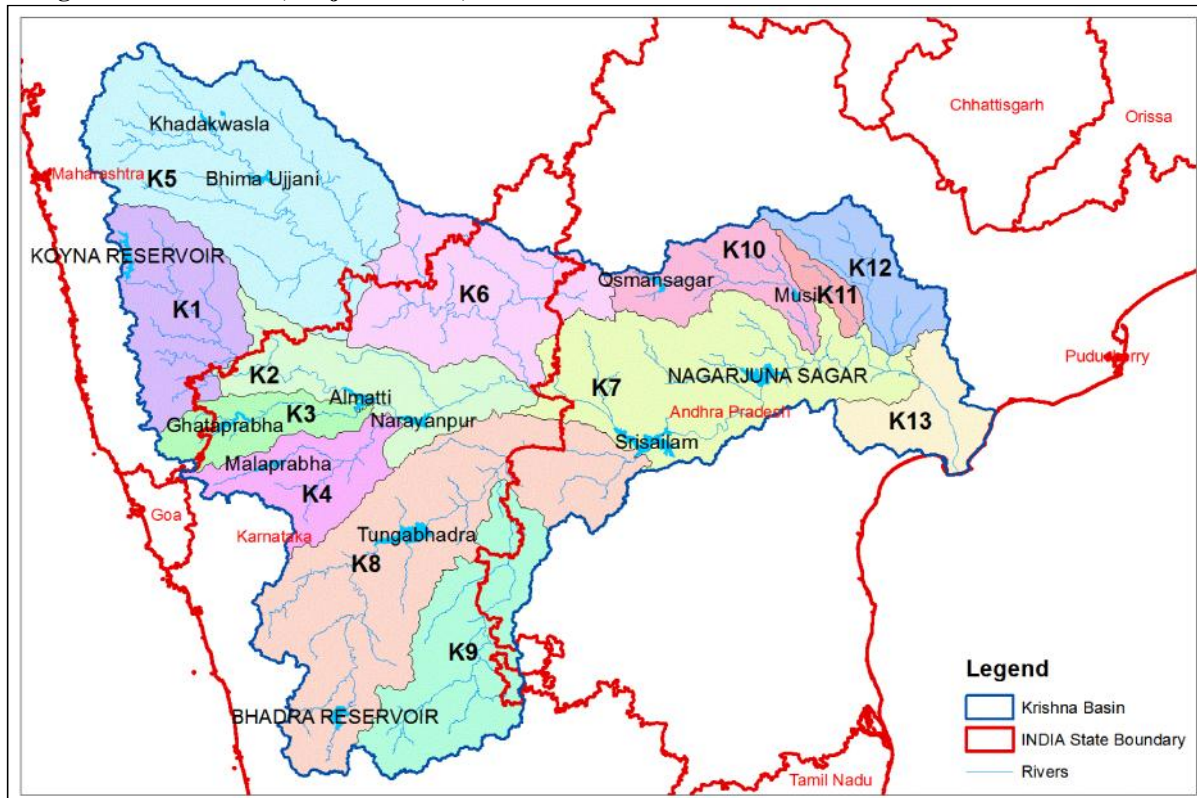
Source: Adapted, Census of India 2001 and IWMI.

Figure 9: 3-D visualization of the Krishna basin



Source: Generated from SRTM data, srtm.usgs.gov

Figure 10: Sub-basins, major streams, and reservoirs in the Krishna basin



Source: Regenerated and adapted, International Water Management Institute, Hyderabad.

4.3. Ecological geography of the river

The Krishna River is rain-fed and flows through four ecological zones of India: the Western Ghats; the Deccan Plateau; the Eastern Ghats; and the Eastern Coastal Plains. The contribution of the monsoon and its spread over the basin and the three riparian states is schematically presented in Figure 11. The southwest monsoon accounts for more than 90% of the total rainfall, of which 73% arrives within the months of June and July. Hence rainfall in the two months is crucial for *kharif* crops (monsoon crops) in the region. By October, the southwest monsoon retreats (KWDT-I 1973).

Figure 11: The Indian monsoon⁷¹

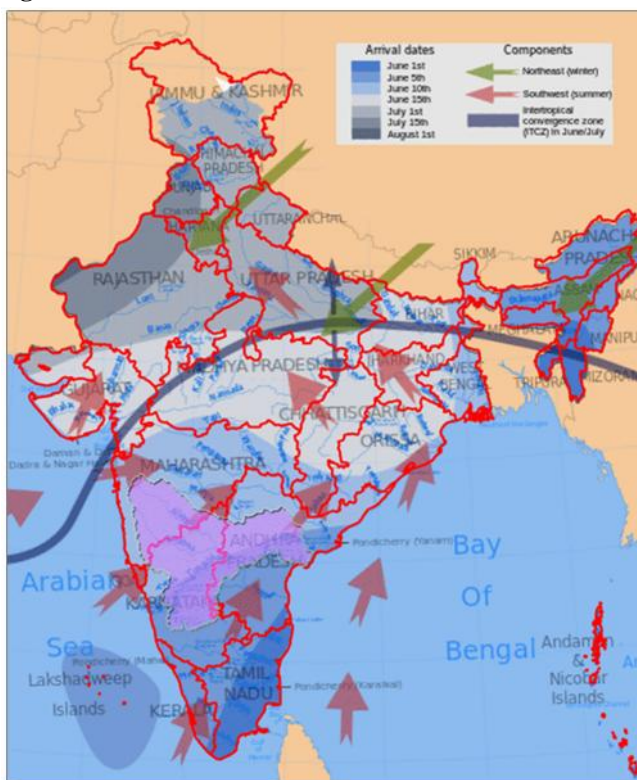


Figure 12: Precipitation in the Krishna basin⁷²

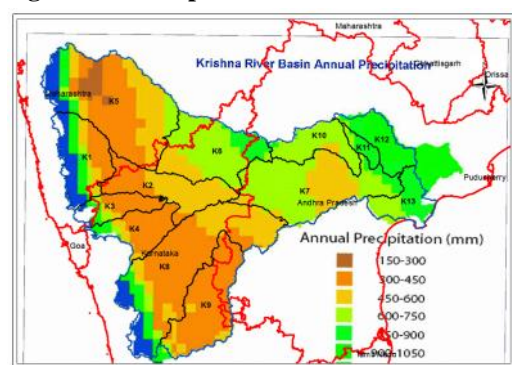
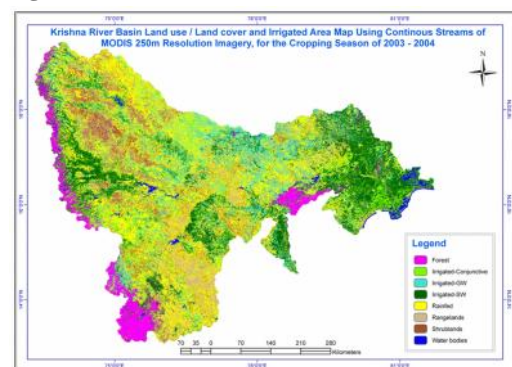


Figure 13: Land use in the Krishna basin⁷³



⁷¹ Source: adapted, from

http://en.wikipedia.org/wiki/File:India_southwest_summer_monsoon_onset_map_en.svg accessed 20 November 2013.

⁷² Source: Regenerated and adapted, International Water Management Institute, Hyderabad.

⁷³ Source: International Water Management Institute, Hyderabad.

The climate in the basin is classified as tropical monsoon, known for its high temperatures and small annual temperature ranges through the year, with intense seasonal rainfall. The seasonality is a distinct and defining character. The high annual precipitation does not differ much from that of a rain forest, but it occurs in a concentrated spell, followed by an intense dry season during the low-sun season (winter) and, later, high temperature months (summer). Proximity to the equator and ascending trade winds from sub-tropical high pressure zones towards the inter-tropical convergence zone define its characteristics. This tropical climate combined with the physical geography of the rain-shadow inducing Western and Eastern Ghats on either side of the basin produce the uncertainties and variations of rainfall, hence access to irrigation. Figures 12 and 13 show the spatial variation in precipitation and land uses across the basin. Many areas in the basin across the three states are drought prone.⁷⁴ The extent of drought affected areas is a key parameter in making water allocations, and building irrigation schemes in drought-affected areas has been a priority (KWDT-I, 1973).

The purpose of presenting this ecological geography description is to show the uncertainties of water availability in the Krishna river basin. These uncertainties define and shape the nature of water disputes in the basin. Since water availability relies on rainfall, large volumes of water flow through the rivers of the basin during the monsoon, but river levels drop drastically during the other seasons. The wide seasonal fluctuations require building storage and regulating structures. Due to the very warm temperatures, evapotranspiration losses are also high, making it an important consideration in irrigation planning for agricultural development in the basin.

⁷⁴ A normal drought when annual rainfall departs negatively by 25% or more from the 20% probability rainfall. And an area is chronically affected when the annual rainfall departs negatively by more than 25% from the 40% probability rainfall (Irrigation Commission 1972).

4.4. The Krishna river dispute: A brief overview of important milestones

The Krishna river dispute has a long history. Before independence, two British provinces of Bombay and Madras, two major princely states of Mysore and Hyderabad, and some other smaller princely states had riparian interests in the river. The first major river water sharing agreement for the Krishna dates back to 1892, between the downstream British province of Madras and the upstream princely state of Mysore, over sharing of Tungabhadra waters. The dispute recurred and resulted in several more agreements prior to independence among the three constituents of Madras, Mysore, and Hyderabad.⁷⁵ The Bombay presidency was not a party to these disputes or to the agreements. After independence, all four constituents - Bombay, Mysore, Hyderabad, and Madras - became states in the Indian federation. After becoming a republic in 1950, the Planning Commission of India organized an interstate conference in 1951 to facilitate the implementation of irrigation development projects by the states as well as the center. A provisional agreement from the conference became the basis for the Planning Commission to approve irrigation development projects in the states.

This was followed by the territorial reorganization of state boundaries in the country. The state of AP was carved out of Madras and Hyderabad states in 1953 following a popular movement for a separate state by Telugu-speaking people. This was the precursor for reorganization of states on a linguistic homogeneity principle. Following the States Reorganization Act of 1956, Maharashtra, Karnataka (initially Mysore), and AP became the new riparian states of the Krishna river. Madras state (the majority of which is now in Tamil Nadu) ceased to be a riparian state of the Krishna.

⁷⁵ Between Madras and Mysore in 1933; between Madras and Hyderabad in 1938; between Madras and Hyderabad in 1944; between Madras and Mysore in 1944; and, supplemental agreements among the three, Madras, Mysore, and Hyderabad, in 1945 and 1946.

To account for territorial changes and to reallocate Krishna waters, the Central Water and Power Commission (CWPC) organized another interstate conference in 1960, with no significant outcome; but the states contested the validity of the 1951 agreement at this conference. In 1962, the state of Karnataka (then Mysore) made a formal representation to the central government seeking resolution of the contentious issues through a tribunal as per the provisions of the IRWDA 1956; Maharashtra too demanded the same in 1963. The Government of India (GoI) made efforts to mediate and resolve the claims through negotiations, but with no success. Eventually, GoI constituted the first Krishna Water Dispute Tribunal, KWDT-I, in 1969, which gave its report with its decision in 1973, and a Further Report in 1976. The award provided for a review of allocations after 30 years, in 2000. A set of fresh disputes, together with other contentious issues in implementation of the KWDT-I award, led to setting up the second KWDT-II in 2004, which gave its report and decision in 2010, and its Further Report in 2013.

4.5. Reorganizing boundaries and remaking political geographies

Maharashtra, Karnataka, and AP states - the parties to the dispute – have histories of reimagining geographies accompanied by the reorganization of boundaries. Their graduation from constituents of colonial rule to states of an independent India included not only change in their own status as part of the federation, but also reconfiguration of their identities as homogenous ethnic entities sharing common languages. The three states have been carved out of the former presidencies (British India provinces) of Bombay and Madras, and the former princely states of Hyderabad and Mysore. These histories have also accompanied changes in their substantive relation with the Krishna River. This was indeed one of the central conundrums that the KWDT-I had to deal with. The remaking of boundaries contributed in different ways to the emergence and recurrence of disputes over Krishna

waters. I delineate the reconfiguring geographies and the consequent restructuring of power relations and antagonisms between the constituents historically in Table 1.

Table 1: States and their changing relation with the Krishna River

	Riparian state/ Constituents	Krishna river component	
		Length (km)	Basin Area (sq km)
Before independence	Bombay	552	104,861
	Hyderabad	357	30,137
	Mysore	257	90,023
	Madras	193	33,926
	Notes: 8 km along common boundary between Bombay and Hyderabad, 290 km along the common boundary between Hyderabad and Madras.		
After independence	Maharashtra	300	69,425
	Karnataka	483	113,270
	AP	576	76,252
	Notes: 6.4 km along common boundary between Maharashtra and Karnataka, 42 km along the common boundary between Karnataka and AP.		

Source: compiled from KWDT-I and KWDT-II awards (the length of river in the constituents before independence may vary depending on the source).

But before proceeding to the disputes, it may be useful to provide a brief description about the distinct historical geographies of the states. British colonial rule had two distinct territories differentiated by forms of imperial domination: one, directly-ruled provinces known as British India, and two, indirectly-ruled princely states. The former was governed by comprehensive bureaucratic governance structures led by the Indian Civil Services under the command of the Governor-General, the Crown's representative; the latter was indirectly ruled through paramountcy relations. All the three current states include parts of former presidencies and princely states, but Maharashtra and AP are primarily carved out of the British India territories of Bombay and Madras presidencies respectively. Karnataka, on the other hand, is largely comprised of the former princely states of Mysore and Hyderabad. All three states have had their own fractured histories and hybrid sovereignties in their making. I briefly discuss the histories of AP and Karnataka states, on whose transboundary politics over the Krishna river I focus here.

The princely state of Mysore was known as the Mysore Kingdom before it came under direct rule of the British in 1799, when its ruler Tipu Sultan lost a war with Hyderabad state aided by the British East India Company. After the war, the East India Company took over some parts, with other parts incorporated by Hyderabad state. But after a series of insurrections from within Mysore, followed by famines and 1857 Indian Mutiny), in 1881 the Crown returned rule to a native ruler through its ‘rendition,’ and under conditions of paramountcy. Under this indirect rule, Mysore suffered debilitating consequences.⁷⁶ Later through a series of changes in British policy forced by obligations to the international community, Mysore enjoyed a certain amount of autonomy in governing its internal affairs until independence (Hettne 1978, D’Souza 2006). But the iron grip of imperial rule remained intact in other external and strategic matters. Effectively, most Kannada-speaking areas that today form the state of Karnataka remained under British indirect rule for long periods before independence.⁷⁷ This history has created its own regional distinctions in the united Karnataka: the actual Mysore state, the Hyderabad parts of Karnataka, and the Bombay parts of Karnataka.

AP has an equally agonizing history. This Telugu speaking state’s population was distributed between presidency and princely state territories during colonial times. Its history of mutilation and discontinuity goes back to the times when most of the Telugu-speaking populations were part of Hyderabad state under Asaf Jah I of Hyderabad in the 1700s. But through a series of agreements for strategic cooperation, bits and pieces of Telugu-speaking areas became part of the Madras presidency, under direct British rule. The rest of the Telugu-

⁷⁶ See Hettne 1978 for a comprehensive discussion of how indirect rule impacted the political economy of Mysore. For impacts of British indirect rule on princely states and their economies generally, see Hurd (1975a, 1975b).

⁷⁷ Some Kannada-speaking areas were also part of Bombay presidency.

speaking areas, today known as Telangana, remained part of the Hyderabad princely state and under indirect rule of the British. Through agreements in 1759 and treaties in 1766 and 1768, the British gained revenue rights for the Musilipatnam and other territories known as “circular districts.” Later the present Rayalaseema districts were also ceded to the British by Hyderabad in such exchanges. All three regions were brought together in the first states reorganization in 1956. These different historical trajectories of the regions led to their own distinct regional identities and uneven development geographies. The parts under direct rule experienced irrigation development much earlier compared to those under the princely state. This uneven development was the source of frequent sub-regional movements - the recent carving of the new Telangana state being a case in point.

4.6. Colonial histories of the Krishna disputes and entrenched asymmetries⁷⁸

The first formal dispute over Krishna waters goes back to the agreement of 1892 between the Mysore princely state and the Madras presidency, an outcome of the dispute raised by the Madras presidency in June 1890. Madras presidency complained to the colonial government of India about Mysore state’s construction of irrigation projects on the Tungabhadra (a Krishna tributary) and the Cauvery (or Kaveri, as it was known earlier) river systems. Madras presidency alleged that their irrigation projects, the Kurnool-Cuddapah canal and the Cauvery anicut (dam), would be adversely affected by Mysore state’s proposed irrigation works. In legal parlance, Madras presidency claimed easementary and prescriptive rights acquired via their long-standing use of water in the two river systems that were violated by Mysore’s

⁷⁸ Besides the two tribunal award documents and the CWC’s (1995) compilation of legal instruments on interstate water sharing, scholarly works on the Krishna dispute are limited to D’Souza (2005, 2006) and Hussain (1972). D’Souza’s work also primarily relies on these limited sources. In this particular section, I draw on D’Souza’s (2006) and her sources. I also benefit from Radha D’Souza’s critical comments on these sections.

actions.⁷⁹ Madras relied on the provisions of the Madras Compulsory Labour Act of 1858, the Madras Irrigation Cess Act of 1865, and the Indian Easement Act of 1882 for claiming these rights. All these acts were enacted by the British provincial governments and the Government of India in British India, and were applicable to their respective jurisdictions but not to the princely states. Nonetheless, Madras filed these claims (D'Souza 2005, 2006).

D'Souza's (2006) incisive analysis showcases the asymmetric power relation between Madras (presidency) and Mysore (princely state), which allowed Madras to make these claims. Madras as a presidency was under the direct rule of the colonial government of India. Mysore state was a princely state under indirect rule.⁸⁰ A Resident placed by the political department of the Government of India was located in the princely state to coordinate affairs on behalf of British India; reciprocally, the Dewan of the state communicated with the Crown's representative in India via the resident.⁸¹ Within the colonial structure, the Resident represented the princely state's interests while a Governor was responsible for the presidency.

⁷⁹ Easement is “a privilege, service, or convenience which one neighbour has of another, by prescription, grant, or necessary implication, and without profit; as a way over his land, a gate-way, water-course, and the like.” Prescription is “a mode of acquiring title to incorporeal hereditaments [privileges or rights inherited] grounded on the fact of immemorial or long-continued enjoyment.” (Black's Law Dictionary: <http://thelawdictionary.org>). The specific definition may be different in the context of related laws in India, but this communicates the idea of the rights. As Hussain (1972) documents, twenty years of existence of irrigation works is fixed as the period for claiming prescriptive rights by Madras.

⁸⁰ After the Anglo-Mysore wars, Mysore was annexed to British India. But the British restored 'autonomy' by way of a subsidiary alliance and the Mysore state's rendition happened through an oppressive and opportunistic Instrument of Transfer which provided for: (i) the Governor General's right to derecognize the ruler if the native ruler was found unfit to rule; (ii) upholding the treaty of 1799, which ensured subsidiary alliance; (iii) Mysore state was to pay Rs 350,000 of subsidy per annum to the Government of India; (iv) restrictions on Mysore state's military resources and communication with other states; and, (v) obligations of Mysore state to provide land and other support for railways, telegraph and other infrastructure, and extradition of criminals. For further details of the rendition of Mysore state, see Hettne (1978). The transfer of the Mysore state to its native ruler happened because of increasing ungovernability of the state, which included frequent insurrections and the successive famines preceding the rendition. The rendition was to avoid the burden of governing the state. The relation is typical of 'indirect rule' characterized by subsidiary relation and semi-sovereign status of Mysore. A good deal of literature describes this relationship (Copland 2002; Fisher 1984; Hurd II 1975a, 1975b; Menon 1956).

⁸¹ A Resident was the representative of the Governor-General at a native court; a Dewan was the prime minister of a native court (Henry Yule's *The Hobson-Jobson Anglo-Indian dictionary* at <http://dsal.uchicago.edu>).

Even the appointment of a Dewan could occur only with the approval of the Government of India (Hussain 1972). The paramountcy and subsidiary power relations between presidencies and princely states enabled the 1892 agreement and several other subsequent agreements. The prejudiced agreement of 1892 led to later disputes that resulted in Griffin's arbitration in 1913, and later another agreement in 1924. Further agreements on Krishna waters in 1933, 1938, 1944, 1945, and 1946 were similarly unilateral and prejudiced in favor of the Madras presidency's interests (D'Souza 2006). I discuss these agreements (or those that emerged out of disputes) briefly below to demonstrate how these colonial power relations induced power asymmetries that later were internalized as deeper postcolonial conditions with implications for interstate water disputes and their resolution.

In 1890, when Madras raised the dispute, Tungabhadra and Vedavathy were the main transboundary rivers between Mysore state and Madras presidency.⁸² Madras raised objections to the new irrigation works and reservoirs in Tungabhadra's basin. The agreement dated 18 February 1892 was titled as restrictive rules, "Rules defining the limits within which no new irrigation works are to be constructed by the Mysore state without previous reference to the Madras Government" (Central Water Commission [CWC] 1995, p. 279). The agreement identified three categories of irrigation works that could not be taken up by Mysore state without previous consent of the Madras presidency. These rules more-or-less prohibited any further augmentation by Mysore on the rivers identified. If any construction or repair work had to be taken up, full information had to be shared with the Madras government prior to commencement of work. The Madras government was bound not to refuse consent as long as their prescriptive rights did not suffer. Any difference or dispute

⁸² Other rivers shared by the two entities are also included in the agreement, a total of 15 rivers including the Pennar, Chitravathi, Papagni, Palar, South Pinakini. Some of them are not part of the Krishna basin.

would be referred to mutually agreed arbitrators or those appointed by the colonial government of India. There was no provision for further appeal and the arbitrator's finding would be final. For those times, it was highly unusual to grant a downstream entity with such veto powers.⁸³ The prevailing thinking and practices were always the other way around: the infamous Harmon Doctrine of 1895 was premised on absolute territorial sovereignty, which was biased in favor of the upstream state.⁸⁴

The then Dewan of Mysore, Seshadri Iyer, was a Tamil Brahmin and belonged to the cadre of British-trained officers. Iyer was a choice of the Resident over the local Mysore Brahmins.⁸⁵ Yet Iyer had forcefully resisted Madras' claims. In his memo to the Resident, Iyer countered the claims of Madras on the following valid grounds, noted by D'Souza (2005):⁸⁶ (i) the laws of applying private property rights for water through prescription cannot be the basis for assessing whether one state's action affect another state's interests. It should be based on

⁸³ See Hussain (1972) for an extended discussion on the prejudicial nature of the agreements between Mysore and Madras.

⁸⁴ Judson Harmon's opinion, quoted in McCaffrey (1996: 565-566): "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validly from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source." In this paper, McCaffrey traces the history of the Rio Grande river dispute between the United States of America and Mexico until its resolution in a convention in 1906. The convention resulted in a treaty following principles of equitable apportionment in distribution. While observing that Harmon's Doctrine had not influenced the United States decisions, McCaffrey points to the prejudicial nature of the Doctrine by looking at simultaneous resolutions of interstate river disputes in the United States, such as the one between the states of Kansas and Colorado in 1907. The United States Supreme Court ruled that interstate river disputes could only be resolved through equitable apportionment.

⁸⁵ This administrative control by British-educated Tamil bureaucrats in Mysore princely state remained a source of rancor and social cleavage between the Kannadigas and Tamils; for some discussion on these fault lines, see Hettne (1978) generally, and more specifically, p.72-74). These fissures resurfaced and became source of social conflicts and linguistic nationalist politics in Bangalore and Karnataka in general (Nair 2005). This is one of the cultural fault lines over which political mobilization happened frequently in the Cauvery dispute.

⁸⁶ The actual correspondence between the parties was reproduced in Hussain (1972), with Seshadri Iyer's memo in pages 48-55. For a comprehensive legal critique of this memo and the agreement of 1892, see D'Souza (2005).

‘higher grounds of public welfare and prosperity;’⁸⁷ (ii) Even if the alien system of private riparian rights were imposed, practices of international law do not deny the natural right to use water flowing through a territory, when it could not cause injury to downstream interests; (iii) Mysore state’s rights to the water falling within its territory should at least be recognized, if not those in the river, which may be merely flowing through it; (iv) If a claim for right of easement by prescription is indeed valid, can the 20 year term prescribed by the Easement Act be adequate to determine such rights? D’Souza (2005) argued that the provisions of the Act could not be applied because the Act, was enacted in 1882, after the Instrument of Transfer of 1881- and the Instrument of Transfer did not include any provisions concerning water rights; (vi) Further, such rights however could not be claimed for recent or ongoing works in Madras or for the water flowing waste over these works; (vii) Mysore’s traditional system of tank irrigation, if it was to function at its normal capacity, would not leave much water draining into river. The prescriptive rights acquired through such use had to be protected in Mysore as well. The ‘new irrigation works’ against which Madras complained were just a new method of augmenting the water, which otherwise would have been augmented through tank irrigation.

But these objections did not yield any favorable results for Mysore. In another memo sent after the agreement in 1892, Iyer appealed for maintaining an inventory of irrigation works in Madras and sharing the information in order to make the agreement work. Protection of

⁸⁷ D’Souza (2005) argued that this application of English common law principles was alien to an entirely different socio-ecological context of community managed tank irrigation systems in Mysore. This was a colonial and imperial rule-induced structural schism that remained a source of tension in interstate water disputes. For additional discussion on various dimensions of the schism between traditional and modern irrigation systems in India, see Vani (1992), Sengupta (1985), D’Souza (2001, 2002, 2005).

prescriptive rights required evidence of eligible existing and functioning irrigation works. But no such systems were put in place.⁸⁸

Incidentally, this lack of inventory did become an issue before Sir H D Griffin's arbitration over another dispute in the Cauvery river system. In 1910, Madras raised objection to a dam (the Krishnarajasagara) proposed within Mysore territory on the Cauvery, as it affected its own Cauvery-Mettur Project. The colonial government of India referred the matter for arbitration. Griffin held with Madras' interpretation of prescriptive rights in objecting to the Mysore's proposed dam.⁸⁹ The government ratified the arbitration award; but Madras appealed to the Secretary of State for India, who suspended the award owing to its inadequate protection of Madras' interests (Gulhati 1972). Fresh negotiations were later initiated, which led to the agreement of February 1924, an extension of the 1892 agreement with new understanding regarding construction of the two projects in contention, the Krishnarajasagara dam in Mysore and the Mettur project in Madras.⁹⁰ The 1924 agreement was followed by supplementary agreements in 1929. These agreements were, however, concerned only with

⁸⁸ D'Souza (2005), drawing on Vani (1992) and Sengupta (1985), attributes this lack of systems to the impossibility of the task: first, the tank systems were largely community managed (Sengupta 1985); secondly, the Indian Irrigation Commission Report (1903) observed that it would be an enormous task to survey and prepare a register with maps of tank systems for planning restoration works. The 39,000 odd tanks in the Mysore province alone would take 15 years for 100 personnel (Vani 1992). But as Col McN.Campbell's (Chief Engineer at Mysore) memo to the Indian Irrigation Commission (1903, p.320) put it, the concerns were about cost effectiveness and utility of such an exercise, which conspicuously did not include the purpose of enabling implementation of the 1892 agreement. This goes along with the observation by the KWDT-I (1973, p.96) about the colonial administration's arbitrary nature of interstate water distribution.

⁸⁹ For more detailed discussion of the arbitration, see Gulhati (1972: 117-122). Also see Chauhan (1992:155-163).

⁹⁰ The power asymmetries between the two states underlined the effecting of the agreement of 1924: "the Cauvery dispute between Mysore and Madras, settled in 1925 was a dispute between British India and the other was (*sic*) a dependent princely state under the British suzerainty. The dispute was not settled by the appropriation of Law, but through the authoritative decision of the sovereign power or the British Crown." Berber (1959:180-81) cited in Hussain (1972:8).

the Cauvery river system, and later became central to the dispute between Karnataka and Tamil Nadu before the CWDT.

The Griffin Arbitration exemplified the politics of interstate water dispute resolution under colonial rule. The asymmetrical power relations internalized and institutionalized through the 1892 agreement could neither be assimilated nor mitigated by law. Attempts to correct these asymmetries by law were simply obliterated by imperial power. This has further internalized these asymmetries, becoming a perpetual thorn of contestation and disputation, much more vigorously in the case of the Cauvery dispute (CWDT 2007).

The subsequent and supplementary agreements were also ad-hoc and arbitrary. In an agreement dated 28 December 1933, Madras and Mysore agreed on further clarification and application of the 1892 agreement on specific projects and issues (CWC 1995, 294-296). This was followed by two more ad-hoc agreements in 1938 and 1944 between Madras and Hyderabad about utilizing Tungabhadra waters (Ibid: 297-301). The first agreement was a draw of 55 TMC and 65 TMC by Madras and Hyderabad respectively. The latter agreement superseded the former, and the shares modified to 65 TMC for each state. These agreements did not involve Mysore, even though it was a riparian state to the Tungabhadra river subsystem; nor did it include the Bombay presidency, another riparian state to the Krishna river system. The following clause from the agreement of 1944 reflected the ad-hoc nature of the agreements:

2. The object at present is to make it possible to start immediately a joint scheme between Hyderabad and Madras for a partial appropriation of the Tungabhadra waters at Mallapuram leaving all matters of absolute right and claims and disputed points for future settlement (CWC, 1995: 299).

Another agreement between Madras and Mysore followed later the same year of 1944, over sharing of Tungabhadra waters above Mallapuram. This was when Mysore proposed constructing the Lakkavalli reservoir on the Bhadra tributary. This agreement sought to settle sharing of Tungabhadra waters above Mallapuram. This settlement was not to limit the operation of the 1892 agreement in any manner (CWC 1995, 305).

These ad-hoc, often prejudiced and fragmented agreements had an important and complex bearing when the states, post-independence and post-reorganization of boundaries, encountered the conundrum of equitable sharing.⁹¹ A couple of significant transitions mattered greatly in shaping interstate water disputes and their associated politics. First was the transition from a colonial-ruled and arbitrated dispute resolution to that of universal principles of equitable apportionment. The other major transition was from imperial-power governed, loosely connected, semi-sovereign states to a single federal democratic nation-state and Republic. This constituted several changes. First, the political geographies and accompanied stakes of the constituents changed: from semi-sovereign princely states and monolithic bureaucratically-governed presidencies to linguistically and culturally homogenous, federally-linked equal constituents with their own geopolitical imaginations of identities and statehood. Secondly, the constitution and the embodied principles strongly inclined towards the doctrine of 'eminent domain' with respect to natural resources in the country. This is particularly so with respect to transboundary interstate river systems, though water was a state subject. The application of legal principles of equitable apportionment was subject to these political and structural features of Indian federal democracy.

⁹¹D'Souza (2004) conceptualized this as a tension between the politics of democracy and that of development: the politics of democracy seeking devolution of power to communities; while that of development required conceding power to global institutions.

In the following sections, I engage with these historical and structural conditions enabling and reproducing contestations over interstate water disputes. I pursue two lines of inquiry: first, I examine how interstate water disputes are resolved, especially in applying equitable apportionment principles and their implementation; and second, how the colonial histories of prejudiced transboundary political geographies define the historical and structural conditions of postcoloniality. The tenuous link between the two lines of inquiry is self-evident. The colonial histories of asymmetrical power relations and prejudiced sharing arrangements produced uneven geographies of development between the political constituent units, the states. Put in simplified terms, the erstwhile indirectly ruled princely states generally lagged with respect to large-scale irrigation infrastructure development, while directly ruled presidencies benefitted from advanced development.⁹² Harmonizing the uneven geographies and achieving equity in allocation has been limited and poses complex challenge. For instance, already existing uses and utilization had to be protected, enunciated by legal principles such as '*qui approbat non reprobat*' (one who approbates cannot reprobate) (CWDT 2007, Vol II, 47). D'Souza described this structural tension aptly:

Indeed, the disjuncture between formal law and social reality is a characteristic feature of colonial law... This disjuncture forms a structural feature of Indian society, one that entrenches a schism between law and society and reproduces imperial-colonial power relations long after Independence (D'Souza 2005: 340-341).

⁹² This is generally the case with large-scale irrigation infrastructure provision, with the obvious advantage of the colonial power in technology and capital inputs. However this may not be true in all sectors and there may be exceptions of progressive princely states. For example, see Kale (2014), who argues that Mysore state has had a progressive model in state-directed development and industrialization in comparison to the Madras and Bombay presidencies.

4.7. Post-independence politics in the Krishna dispute

After independence, Krishna water disputes recurred many times over specific project-related issues. But as a legally recognized interstate water dispute, it had been adjudicated in the 1970s (KWDT-I) and the 2000s (KWDT-II). The KWDT-I tribunal, headed by Justice Bachawat, adjudicated Krishna waters dispute along with the Godavari waters; KWDT-I was notified in April 1969.⁹³ The KWDT-I's award came into operation soon after that, and expired in 2003. By that time, several accumulated and irreconcilable disputes between the states led to setting up another tribunal (KWDT-II), headed by Justice Brijesh Kumar, in April 2004. KWDT-II gave its award in December 2010 and the Further Report in November 2013.

The sharing agreements under colonial rule were central to the deliberations before the KWDT-I. In the seven major issues framed, two concerned the pre-independence agreements of 1892, 1938, and 1944. Another major issue was a post-independence 1951 agreement sponsored by the Planning Commission prior to the IRWDA 1956 and reorganization of states' boundaries in 1956. The state of Karnataka alleged that it never ratified the 1951 agreement and challenged its validity.⁹⁴ In addition, the tribunal also had to engage with issues arising out of states' boundary reorganization and consequent reallocations. By 2004, the KWDT-II had far more complex issues to decide, framed as a long list of 30 issues. It had to deal with the question of equitable apportionment in the changed context of utilization of

⁹³ Initially the KWDT-I's scope included looking into matters related to proposed diversions of Godavari River waters into the Krishna basin by some states. Hence the party states initially included riparian states of Godavari – Madhya Pradesh (now divided into two states – Madhya Pradesh and Chhattisgarh) and Odisha (then Orissa). After the proceedings commenced, the party states declared (on 19 April 1971) that they would not seek any mandatory order for such diversions of Godavari waters to the Krishna river. Hence the two riparian states of Godavari were excluded from the dispute (KWDT-I 1973, page 3).

⁹⁴ Then known as the state of Mysore, the state formally changed its name to Karnataka in 1973.

Krishna waters since the KWDT-I. It had to consider several other legal, technological, and project-specific disputes that became a source of contention between the party states over the period of KWDT-I's award operation and implementation.

The range of issues and the manner in which the issues were adjudicated between the two tribunals, set apart by 30 years, offers illuminating insights about not only the transforming nature of disputes, but also the changing character of interstate relations. Here I trace the dispute to uncover the deeper structural and historical conditions contributing to the contestations over, and the politicization of, the dispute.

4.7.1. Prejudice and postcoloniality

The Planning Commission-sponsored interstate agreement between the states in 1951 became a source of contestation in the context of several projects - Mysore's abstraction of supplies by Gayathri reservoir in 1957, Bombay's Koyna project in 1958, another Mysore project on the Ghataprabha in 1959. This agreement was also contested during the CWPC's attempt to reallocate water shares after the 1956 states reorganization in 1959-60 (KWDT-I 1973, 35).

Before the KWDT-I, Mysore claimed this agreement invalid and argued that it was not bound by it as it had never ratified it. The other two party states, Bombay and AP, claimed it to be a ratified agreement. The conference was attended by the four riparian states of that time: Bombay, Mysore, Hyderabad, and Madras. The three states of Bombay, Hyderabad and Madras had projects already lined up; but Mysore was lagging in its plans as a state newly integrated (in 1949) into the Indian Union. The three states presented their needs and demands with much preparation, but Mysore was ill-prepared for the conference. Mysore's Chief Minister, K C Reddy, attended the conference, but not all the sessions. No technical personnel from Mysore attended; but the conference had negotiations with the participation

of technical teams from the other states. In a session he attended on the first day, Reddy handed over a note with utilization details of Krishna waters in Mysore, which was not a part of the technical note already prepared for discussion by CWPC. This technical note differed from Reddy's note and assessed Mysore's needs at 124 TMC, whereas Reddy's note had it as 148.6 TMC. In the final memorandum of agreement, Mysore was allocated a share of 118.5 TMC, less than either note (KWDT-I 1973, p.32). Later, the three other states ratified it, but Mysore did not. Both Maharashtra and AP argued that Mysore state was party to the agreement. The tribunal examined the evidence and ruled the agreement invalid. It also noted that the Planning Commission had no authority to award allocations.

D'Souza (2006, 203) argued that the presumptive notions of the Planning Commission in allocating shares, and the imperial style of federal governance by the GoI, were inherited from the former colonial government. Indeed, the casual approach to water allocations, the arbitrary nature of arriving at agreements, and the presupposition of ratification support her contention. In the interim period between the agreement and the tribunal's adjudication, the Planning Commission continued to clear and sanction projects on the basis of the supposed agreement of 1951. This further widened the disparities in irrigation development between Karnataka and the other states. In other words, this agreement led via the internalization of colonial and imperial power relations into irreconcilable asymmetric geographies between the party states. These ingrained and embedded asymmetries characterize the postcolonial structural conditions of interstate water disputes.

Other contentious issues before KWDT-I rose out of ambiguities emerging from the integration of Mysore and Hyderabad princely states into the Indian Union.

III: Is the Agreement of July, 1944 valid and subsisting and, if so, with what effect? Was it invalid as Bombay, Sangli and Hyderabad were not parties to it? Was it rendered ineffective by the Supplemental Agreement of 1945? Did it survive on the merger of the princely state of Mysore in the Republic of India? Had it ceased to be operative on the reorganisation of states?

IV: Are the Agreements of 1892 and 1933 so far as they relate to river Krishna and its tributaries subsisting and, if so with what effect? Did they survive on the merger of the princely state of Mysore in the Republic of India? Have they ceased to be operative on the reorganisation of states?

The argumentation of the party states reflected their relative vantage positions. AP relied on a case of contractual obligation whereas Karnataka based their arguments on historical prejudices: "...AP's conception of justice and equity was a legal and contractual one, whereas Karnataka's was a historical and political one" (D'Souza 2006, 193). The issues also posed the challenge of engaging with a conundrum: the historical and colonial contradictions were conflicting with modern principles of equitable apportionment. Righting of historical prejudices would not be easy. The irreversibility of spatial transformation and the legal principles of '*qui approbat non reprobat*' create a particular kind of tenuous structural condition, bearing potential for prolonged litigation. This conundrum set the limit for law. And the tribunal chose not to adjudicate the matter, but encouraged a political solution and asked the two states of AP and Karnataka (the state of Maharashtra had no interest in this issue) to resolve the issue through mutual negotiations and deliberations. Subsequently, the two states arrived at a series of agreements: in an agreement dated 2nd September 1971, the two states agreed on a schedule of projects in the Tungabhadra system beyond which they would not take up new works without each other's consent. This was a partial reconciliation of issues listed under Issue IV, and was included in the final order of the KWDT-I award. But in another, dated 23rd October 1972, the two states requested the tribunal *not* to decide Issue

IV and declared they would not ask for any relief on the basis of the 1892 and 1933 agreements (KWDT-I 1973, pages 45-46). The two states also requested the tribunal not to decide about enforceability of other ad-hoc agreements made in 1944, 1945, and 1946, listed under Issues III and IV. The tribunal consented and did not allow any further arguments on these issues.

The tribunal incorporated these agreements in their order and ruled that their order would supersede all earlier agreements made during colonial rule, those of 1892, 1933, 1944, 1945, and 1946. The respective proportions accrued via the agreements were accounted in the state-level allocations on the basis of equitable apportionment principles (KWDT-I 1973, 47).

D'Souza (2006) argued this integration of colonial era agreements as an instance of internalization of colonial power relation: "In incorporating the 1892 and 1933 Agreements in a form modified and acceptable to the parties, the KWDT internalized what was until then a problem imposed by the externality of colonization" (p.195).

I differ with this interpretation, not with the idea of internalization itself as an outcome, but the suggested manner of internalization. The tribunal realized the irreversibility of these colonial contradictions and the inequities within the Tungabhadra subsystem. It tried to address and mitigate Tungabhadra subsystem inequities by accounting for the corresponding apportionments in their state level allocations based on equitable apportionment principles. This is an illustration of how scale plays important role in mitigating inequities. In other words, the politics of re-scaling is an effective strategy for defusing disputes. However it is true that within the microspace of the Tungabhadra subsystem, the asymmetries and unevenness represent a tenuous structural condition created by the history of colonial rule.

4.7.2. Boundaries, reterritorialization, and recurring disputes

Reorganization of states' boundaries

The linguistic-based reorganization of state boundaries in 1956 complicated sharing arrangements and became a regular source of disputation between states. The creation of Andhra state in 1953 had involved transferring some Kannada-speaking blocks from Bellary district of Andhra state to Mysore state; more were ceded after the 1956 states reorganization in. Mysore state insisted on reconsidering the 1951 agreement allocations taking into account this inclusion of new territories; the state refused to ratify the 1951 agreement until this would be achieved (KWDT-I 1973, p.34).

The states reorganization in 1956 also brought together Telugu-speaking parts of Hyderabad state and Andhra state for a unified state of AP.⁹⁵ As with Mysore, AP state demanded additional allocations on account of this. KWDT-I relied on the provisions of the States Reorganization Act of 1956, under sections 107 and 108, concerning interstate arrangements for sharing water and power and resolving any unsettling effects of the reorganization. These sections provided for the center's directions whenever the states failed to arrive at mutually agreed arrangements. Some key decisions to illustrate the complexity of issues are the following.

- a) Mysore's claim for releasing water from Koyna hydroelectric project in Maharashtra: The Koyna hydroelectric project, conceived in 1952, envisioned provision of irrigation to Bijapur district (then in Maharashtra) through lift irrigation. But after reorganization, Koyna remained in Maharashtra, but Bijapur became part of Mysore. Costs escalated in the Koyna project and lift irrigation for Bijapur proved economically infeasible. In 1958,

⁹⁵ See states Reorganization Act 1956, Part II, Section 3; and the First Schedule of the Constitution of India for specific details of territorial changes and constituents of AP and other party states.

Maharashtra offered irrigation for Bijapur at Mysore's cost, but Mysore was unwilling to pay. It claimed Bombay was obliged to provide for irrigation in Bijapur district. KWDT-I decided against this claim.

- b) Mysore's claim for release of water from Ajra storage dam in Maharashtra: Maharashtra proposed that the Ajra dam on the Hiranyakeshi River under the Ghataprabha Valley Development Scheme remained in Bombay state after reorganization, even though part of the area to be irrigated fell in Mysore. Mysore claimed that Maharashtra remained obligated to supply water for these areas from Ajra dam. During the proceedings, Mysore relented on this demand.
- c) AP's demand for extension of the Tungabhadra Left Bank low level or the Upper Krishna Project (UKP) to meet the irrigation requirements of Gadwal and Alampur talukas (administrative unit below district). The scheme was a collaborative project between the states of Madras and Hyderabad at Mallapuram, and envisioned a Left Bank low level canal extending up to 127 miles into Raichur district, then bifurcating into North and South Gadwal branches to serve parts of Gadwal and Alampur talukas of Raichur district, but restricting the irrigated area to 450,000 acres.⁹⁶ The UKP proposed by Hyderabad state was to supplement irrigation for the two talukas. All Raichur district was part of Hyderabad state before states reorganization, but was subsequently transferred to Mysore state except for the Gadwal and Alampur talukas - which became part of the AP state. AP claimed that Mysore was obligated to extend the canal branches, or include the talukas under the UKP for irrigation in the two talukas. The tribunal relied on the recommendations of the Krishna Godavari Commission (Gulhati, Jaini and Hoon 1962) and denied the claim. The tribunal also stressed the Krishna Godavari Commission's suggestion about AP seeking cooperation from Mysore state for providing irrigation to the two talukas; and advised that demand through formal process could only result in vigorous opposition by the Mysore state.
- d) AP's demand for extension of Bhima project: Before reorganization, Hyderabad envisaged a Bhima Reservoir Project near Tangadgi in Gulbarga district for irrigating an area of 400,000 acres in Gulbarga and Mehboobnagar districts. After reorganization most

⁹⁶ The rest of irrigation needs of the two talukas were to be met by another Upper Krishna Project. This also had to be decided by the tribunal.

parts of Gulbarga including Tangadgi got transferred to Mysore state while the Mehboobnagar district became part of AP. After reorganization, AP wanted to proceed with the reservoir project with head works at Tangadgi to serve Mehboobnagar district. On the other hand, Mysore state wanted to two projects, Bhima Lift Irrigation Scheme at Sonna and Bhima Irrigation Project at Sonthi to meet the irrigation needs of Gulbarga district. The tribunal did not consider the proposals as they did not have the necessary sanctions.

- e) AP's claims for power generated from Munirabad Power House: Before reorganization, Hyderabad state constructed the Munirabad Power House. After reorganization, the Tungabhadra Left Bank Canal and the Munirabad Power House came under Mysore state's control. AP claimed a share of power from Munirabad Power House and argued for vesting the control of the Power House with the Tungabhadra Board. The tribunal determined that AP was not entitled for any share of power from the Munirabad Power House and denied vesting its control with the Tungabhadra Board.

These issues were decided strictly by the provisions under the States Reorganization Act 1956. But it cannot be claimed that these issues were resolved entirely. The decisions of the tribunal left loose ends and ambiguities that eventually reappeared, in modified forms. The following examples illustrate this. The tribunal did not find any merit AP's demand for extension of either the Tungabhadra Project or the UKP to provide irrigation for Gadwal and Alampur talukas. Even though the two projects originally were to provide for the two Talukas, they did not qualify for irrigation provision by the two projects due to the transboundary administrative constraints. But there was no doubt about the technical feasibility or historical validity in the claim about meeting the irrigation needs of the two Talukas by the two projects of Mysore. If the two Talukas were part of Mysore state, it would have been a possibility; rather it would be an obligation of the Mysore state. The tribunal's observation that AP would not succeed if it pursued formal means reflected the structural constraints and limitations of formal and legal approaches in addressing them. The tribunal

instead recommended political solutions through ‘mutual cooperation and adjustments,’ outside legal spaces of adjudication.

The implementation of the Tungabhadra related agreements was another example where reconfiguration of state boundaries led to regular source of tension. It had to be addressed by both KWDT-I and KWDT-II. Both the tribunals ruled that the existing arrangement should continue till a Krishna basin level mechanism was put into place. This did not materialize and the transboundary tensions endured. The Tungabhadra project was a pre-independence collaborative project between Mysore state, Hyderabad state and Madras presidency. A Tungabhadra Board was created to manage the project through a presidential order in 1953, when the Andhra state (not the unified AP state). After reorganization in 1956, the left side of the project including the canal system had become part of the Mysore state and was controlled by the Mysore state. The right side canal systems crisscrossed the boundary between Mysore and AP, first flowing through Mysore, then in AP and then reentering Mysore state. Another project, the Rajolibanda Diversion Scheme (RDS) also became a transboundary project with the head works, about 27 miles of main canal and a command area of 5600 acres in Mysore state limits, and the rest of the canal with 87,000 acres of command area in AP limits. Before KWDT-I, AP argued that these portions should also be administered by the Tungabhadra Board. Till then, only the right half of dam, right bank low level and high level canal systems and two power houses were entrusted to the Board. Mysore argued for abolishing the Board entirely, charging the Board of partisan approach against Mysore.⁹⁷ KWDT-I however declined to engage with these arguments, partly for

⁹⁷ This was the position of Karnataka at that time; but later during the time of KWDT-II, the position changed. The administration and maintenance of canals came under Karnataka and the state had no interest in maintaining the head works for the tail end AP areas as well.

reasons of lack of jurisdiction, and recommended continuing with existing arrangements until the Government decided to put in place a mechanism for the entire Krishna basin.⁹⁸ This came up before the KWDT-II as well. When Karnataka proposed a mini-hydel project on the common pondage of RDS, AP objected to it and thus this came up as an issue before the tribunal. The tribunal considered various factors including the critical importance of RDS in serving drought-prone areas in AP, and ruled that Karnataka could not implement the project (KWDT-II 2010, 571-572). AP argued again, before KWDT-II, that the Tungabhadra Board should take over the portions on either side of the boundary. KWDT-II denied this and again ruled that the existing arrangements should continue till a Krishna basin-level mechanism was put in place.

Another instance of a different kind of contestation due to boundaries reorganization was the proposal for augmenting Krishna waters for water supply to Chennai (formerly Madras) city in Tamil Nadu. This proposal goes back to a Krishna-Pennar link proposed in 1951 (before the reorganization of Madras state) for providing irrigation to some parts of Rayalaseema and also provide assured power and water supply to Madras and other cities with industrial development potential. The project did not take off; instead the Nagarjunasagar project was taken up (KWDT-I 1973, 136). But the idea about the Krishna as a potential water supply source for the Chennai city remained. This was discussed in Parliament in 1963,⁹⁹ and was revived by an initiative in 1976-77, alongside the KWDT-I proceedings, through the personal intervention of the then Prime Minister, Indira Gandhi – the politics of which are discussed in

⁹⁸ The tribunal also felt it could not override an already existing agreement between the two states. In this agreement of 1959, the two states agreed to share liabilities of the RDS as per the proportions of water quantity allocations from the scheme. And, in another mutually agreed arrangement dated 25th January 1971, the two states submitted a scheme for sharing of benefits from RDS before the KWDT-I.

⁹⁹ <http://basemaps.in/pdf/TGP.pdf> accessed last 24 December 2013.

Chapter 5. Gandhi encouraged the three riparian states to reach an agreement to contribute to Madras city's water supply. In October 1977, the three states and the GoI entered into an agreement permitting the state of Tamil Nadu to draw 15 TMC (5 TMC each from the riparian states' shares) from Srisaillam reservoir during the period of 1 July to 31 October. Maharashtra and Karnataka alleged before the KWDT-II that AP violated this agreement by expanding the canal and using it for irrigation purpose as well. The tribunal determined that the agreement of 1977 was with reservations from AP about using the canal exclusively for Chennai's water supply (KWDT-II 2010, 717). Nevertheless, this Telugu Ganga project has been celebrated as an example of cooperative federal spirit. However, the underlying politics discussed in the next chapter – while challenging these impressions – offers a nuanced understanding about federal-state relations in India (Gopal 1989).

Boundaries in tension: geographic and geopolitical boundaries in conflict

This tension between boundaries inscribed by physical geography and those by the cartographic geopolitical imagination is an oft-encountered source of disputation. The former is a physical boundary determined by hydrology; while the latter was constructed by administrative boundary, but also represents a particular identity delineated by language and culture. The geographic boundaries defined by hydrology conflicts with the geopolitical and imagined constructions inscribed here by the administrative boundary. The question of whether the allocated water from a river should be utilized only within a river basin's boundary or if it could be used for requirements outside the basin boundary but within the riparian state is a complex one. This conceptual question has not always been resolved via procedures of legal adjudication. For example, the KWDT-I proactively encouraged deliberative processes to resolve such issues. The Issue VI illustrates this tension best, about diversion of Godavari river water for supplementing Krishna water (KWDT-I 1973, 67).

The basis for raising this issue emerged from the pleadings of Mysore and Maharashtra states about meeting their demand deficits. The utilization claims of all the three states together before KWDT-I aggregated to 4146 TMC, which was much higher than the total available water in the Krishna, estimated as 2060 TMC at 75% dependability. The two claimant states posited that this deficit was largely due to over-appropriation of Krishna waters by AP; hence AP should explore options for relying on diverting Godavari waters for meeting its demand beyond its legitimate share in Krishna waters. AP opposed this claim and questioned whether any such direction made by the tribunal would be within the remit or scope of a water dispute under the IRWDA 1956. Diversion of allocated resources within its jurisdiction was its own internal matter, an autonomous prerogative. The state did not want to consider the option, for it might harm its interests in Krishna waters.¹⁰⁰ Mysore and Maharashtra argued that if AP later decided to augment Krishna supplies by diversion from Godavari, the two states should be allowed to claim benefits from the diverted waters. The tribunal preferred a political solution, a mutually agreed approach between the states. The states got together and agreed to the following, which the tribunal included in its order (KWDT-I 1973, 66):

(1) Parties have agreed that each of the states concerned will be at liberty to divert any part of the share of the Godavari waters which may be allocated to it by the Godavari Tribunal from the Godavari basin to any other basin.

(2) In view of the pleadings and the statements of the states concerned, none of the states asks for a mandatory order for diversion of the Godavari waters into the Krishna basin.

¹⁰⁰ The issue of diverting Godavari waters received attention by the Krishna-Godavari Commission (1962), which suggested some possible options. One option under the Polavaram project was under consideration and was discussed in the Parliament in 1963.

The states arrived at this agreement to keep allocations of the two river basins separate. This agreement helped the tribunal defer a potentially tenuous implication of augmenting Krishna waters through a transboundary diversion. It posed the challenge of managing (in)equities at intersecting boundaries – hydrological and geographic. The agreement allowed the tribunal to initially contend that any such diversion could be contested when its award would become due for review after 31 May 2000 (KWDT-I 1973, 230). But Mysore raised this issue again during the explanatory hearings. It claimed that such diversion was feasible by AP under the proposed Polavaram project well before the 2000 review date.¹⁰¹ Thus AP would have an undue advantage until the award expired. Further the tribunal's decision would prevent other states from agitating about the over-subscription of Krishna water until then. The tribunal then modified its award, allowing review before the award expired, clause XIV(B):

In the event of the augmentation of the waters of the river Krishna by the diversion of the waters of any other river, no state shall be debarred from claiming before any authority or Tribunal even before 31st May, 2000 that it is entitled to a greater share in the waters of the river Krishna on account of such augmentation nor shall any state be debarred from disputing such claim. (KWDT-I 1976, 101, underlined emphasis mine)

Thus did the tribunal recognize the need for the states to contest in the event of additional availability of water through diversion, before the award expired. But it did not deliberate where or how, for no other court could adjudicate such a matter; the sole likely possibility was that the states would seek another tribunal to adjudicate the matter. This did not however

¹⁰¹ One of the options was the Polavaram project for diverting Godavari waters to Krishna in AP. The project includes a dam at Polavaram with a link canal feeding into the Krishna close to the Prakasam barrage, irrigating lands in West Godavari, Vizianagaram and Visakhapatnam districts. The project became controversial and was at the center of political contestations in more recent times, especially in the context of the regional tensions for Telangana's separation from AP. See Gujja et al (2006) for conflicting perspectives from diverse political actors in the state.

happen, for the Polavaram project had not yet materialized by 2000.¹⁰² KWDT-II also had to address this issue of augmentation of Krishna waters from external sources. The Polavaram project was brought up again and KWDT-II reaffirmed the right of the states to claim greater shares (KWDT-II 2010, 681).¹⁰³ This remained a space for recurring contestation among states. Intersecting boundaries reconfigure (in)equities, which increase the tendency for disputation.

A different category of diversion, from the Krishna basin to outside it, was also the basis for many issues of contention. Both the tribunals dealt with these cases, relying on legal precedents borrowed from international conflict resolution including the Helsinki Rules (ILA 1967) and Berlin Rules (ILA 2004). The dispute arose because of diverse practices of diversion already in place in the party states. Mysore did not divert, nor had any plans to divert, water outside the basin. Presumably for this reason, the state argued that such diversion was illegal. But the other two states already had instances of diverting Krishna waters outside its basin. Maharashtra was diverting water outside the basin in the Koyna project, both for power generation and irrigation. AP was diverting outside basin in more than one instance. AP held the position that such out-of-basin transfers should be allowed only for irrigation requirements.

KWDT-I referred to interstate dispute cases from US, between New Jersey and New York, Missouri and Illinois, Wyoming and Colorado, Connecticut and Massachusetts; it also drew

¹⁰² In an agreement before the Godavari Water Disputes Tribunal (also headed by Justice Bachawat), the three states of Maharashtra, Karnataka, and AP arrived at an agreement in 1975 about sharing waters of the Polavaram project. With the projected diversion of 80 TMC, the three states agreed to share 14, 21, 45 TMC respectively.

¹⁰³ In a reverse diversion, Maharashtra proposed diverting Krishna waters to the Godavari basin for a project. The tribunal negated the proposal, reiterating the principle of prioritizing in-basin requirements (KWDT-II 2010, 682).

from the Lake Lanoux arbitration between France and Spain; and the debates over the Helsinki Rules to arrive at the following principles.

- (i) Diversion of water outside the Krishna basin is legal as long as the diversion is for the benefit of the areas situated within the territorial boundaries of the riparian states.¹⁰⁴
- (ii) As a principle of equitable apportionment, future requirements *within* the basin have to be prioritized over those *outside* the basin.
- (iii) All *existing* uses outside the basin have to be protected at par with the uses within the basin.

In this process, the tribunal resorted to an interpretation of the law that upholds the epistemic authority of the cartographic imaginations of geography, to resolve the tension between the boundary defined by hydrology and the political boundary.

A state is one integral unit and its interests encompass the well being of all its inhabitants within its territory including areas outside the river basin. Under Section 3 of the Inter state Water Disputes Act, 1956, the crucial question is whether the interest of the state or of any of its inhabitants in the waters of the inter-state river and river valley is prejudicially affected by the action of another state. Thus, the relevant consideration is the interest of the state as a whole and all its inhabitants and not merely the interest of the basin areas of the state (KWDT-I 1973, 126-127, underlining in the original).

KWDT-II (2010, 485) also concurred with this interpretation. Clearly, the tribunals preferred to impose political boundaries' authority over those inscribed by nature - the physical (hydrological) boundary. There are two implications of this imposition. One, this leaves a likely 'marker of difference' that can be a source of political mobilization. Two, it makes it necessary to reconsider the transboundary political spaces of interstate water disputes generally. It is not the physical boundary or any limited sense of spatial proximity to the

¹⁰⁴ The tribunal clarified that it did not have any opinion about diverting waters to areas situated in non-riparian states (KWDT-I 1973, 126).

boundary that determines transboundary space, but it encompasses the entire space represented by cartographic imaginations of boundaries and geopolitical imaginations. This allows political mobilization of sub-national identities at the state level in interstate disputes, enabling escalation of scale of the conflict within a redefined geopolitical imagination of, simply, 'us' vs. 'them' (Chokkakula 2012).

However, using this interpretation, the tribunal decided to protect several existing projects in AP involving diversion of Krishna waters. Mysore and Maharashtra, though agreeing in principle, disputed the extent of protection that should be provided. But the tribunal decided to fully provide protection to these works. These projects, listed below, illustrate the extent to which the notion of territory mattered in such interpretation.

- (i) The Krishna Delta Canals and the Guntur Channel: the Krishna Delta canal system, constructed in 1855, supplies water to extensive delta areas. The Guntur Channel also supplies water to the higher lands adjoining the Krishna delta area, which are technically outside the basin
- (ii) The K-C (Kurnool-Cuddapah) Canal, constructed in 1866 on the Tungabhadra, takes water to famine-vulnerable areas in Kurnool and Cuddapah districts. About 90% of these areas fall in the Pennar river basin.
- (iii) The Tungabhadra Right Bank High Level canal and the Nagarjunasagar Right Bank Canals cater to irrigation needs in areas that fall in the Pennar river basin.

However, the westward diversion of Krishna waters by Maharashtra in the Koyna hydro-electric project was subjected to scrutiny. Maharashtra had been diverting Krishna waters westwards for power generation for over a half century using two major sets of projects: one known as Tata Hydrel Projects diverting 42.5 TMC (+2.4 TMC for evapotranspiration losses); and the other the Koyna hydro-electric projects of 67.5 TMC (+7.3 TMC for evapotranspiration losses). The two projects together account for an annual utilization of 119.8 TMC. The quantity of diversion was not to exceed this limit, as per the agreements

reached at the Planning Commission's interstate conference in 1951. Maharashtra had proposals to expand the Koyna project to further divert 32.5 TMC, as well as several other multi-purpose projects involving diversion of another 108.1 TMC, taking the total planned diversion by Maharashtra to a total of 260.4 TMC. Opposition to these proposals by lower riparian states was one of the primary reasons for the interstate conference in 1951.

This is another instance of tribunals resorting to a context-specific and discretionary decision – which is then subject to temporal changes in priorities. KWDT-I examined Maharashtra's westward diversion proposals. Maharashtra wanted to supplement the irrigation needs of Ratnagiri and Kolhapur districts - places already endowed with assured rainfall. KWDT-I felt that such supplementing could be achieved through other potential projects and need not solely depend on the westward diversion of Krishna waters. Thus, it determined that the proposed westward diversion was to be solely for power generation, and not for irrigation as claimed by Maharashtra (KWDT-I 1973, p.135). Relying on its extensive review of international and interstate water conflict cases, the tribunal argued that there could not be any preferred order of prioritizing uses for water. It concluded that the order of priority had to be always contingent to the context and likely benefits of the use. The order of priority could vary across and within the basin, depending on economic, social, cultural, and technical factors specific to geographic context. There was no universal rule that could be applied for determining the order of priority.

KWDT-I's approach marked this highly context-specific and contingent view about prioritizing use in investigating Maharashtra's power generation project proposals. It considered alternatives sources, the benefit-costs and water losses outside the basin compared to potential benefits if the water was used within the basin, not only from the Krishna basin's

development perspective, but also from India's overall needs and focus on food security at that time, and arrived at the following guidelines:

- (1) Projects which will add to the food production in the country must receive priority over projects relating to other uses of river waters.
- (2) Projects which are more remunerative in direct financial returns, in terms of cost of irrigation per acre or per unit of power generated and in total benefit to the community, and those which would yield quick results should be given preference.
- (3) Region-wise requirements of food and power must receive due consideration, and also the need of backward areas (KWDT-I 1973, p.140).

However, the tribunal reiterated its reservations about these guidelines becoming the precedent for deciding any other contentious issue or in the context of any other basin: "Regional needs and the best means of developing the region on the basis of its geography and the natural advantages available to it must receive due consideration" (KWDT-I 1973, p.140). The emphasis on geographical *context* and the need for *flexibility* in prioritizing uses were the key points here. Following this rationale, the tribunal determined that the state of Maharashtra had other alternatives for power generation, whereas 75-78 percent of the population within the basin depended on agriculture. Considering climatic and physical characteristics, irrigation *within* the basin had to be preferred over westward diversion for power generation. The tribunal denied further westward diversion by Maharashtra and restricted the existing and permitted diversion of 67.5 TMC for the Koyna and 42.5 TMC for

the Tata Hydel projects. It ruled that the westward diversion could not exceed these limits (KWDT-I 1973, 148).¹⁰⁵

Maharashtra again brought their proposals of diversion for power generation before KWDT-II. Interestingly, KWDT-II utilized another instance of a context-specific contingent approach used by KWDT-I, but with contrasting priorities. This time, KWDT-II prioritized Maharashtra's power generation over irrigation, and allowed diversion outside the basin. It allowed 25 TMC from 65% dependable flow for the Koyna project, citing the changed political-economic conditions in the country where the priority was no longer food production. Now, and in addressing Maharashtra's demand, electricity generation for growing Mumbai and other cities was to be preferred (KWDT-II 2010, 785-786).

Thus, the tribunals adopted eclectic approaches in resolving the tension between the physical hydrological boundary and the political boundary. For diversions outside the basin, techno-legal approaches were relied upon, whereas in the case of augmenting Krishna waters, deliberative political approaches were preferred. Both the approaches resolved the tensions, however temporarily. This also allows us to extract a sense of the character of space needed for resolving the tensions. It demands a space that allows both deliberative and adjudication approaches (Chokkakula 2013).

4.7.3. The priority of appropriation rights: Historical-geographies of spatial inequities

River water allocations, as noted earlier, are bound by the principle of '*qui approbat non reprobat.*' History-induced uneven geographies of irrigation development pose a complex

¹⁰⁵ The tribunal noted that Maharashtra had been breaching this limit of 67.5 TMC for a few years, and in 1971, it was more than 97 TMC. Upon Maharashtra's request, the tribunal allowed a transitional period of 20 years for reducing this diversion back to 67.5 TMC, with the consent of the other two states.

challenge in addressing equitable allocations. Historically, AP had advanced levels of irrigation development compared to the other two states.¹⁰⁶ By the 1970s, it had already appropriated a substantial portion of Krishna waters. AP wanted to protect its existing uses and made such proposals before the KWDT-I. The state argued that all the committed uses before the 1951 conference and later up to 1960 should be protected. The water unutilized after 1960 had to be considered for *de novo* allocation. Of course, Mysore and Maharashtra disputed this claim. KWDT-I relied on a variety of sources, such as the case law material from the USA, international law, and Indian law in practice. All these precedents favored protecting existing uses, with almost no exception (KWDT-I 1973, 98-101).¹⁰⁷ The case law material from the USA used priority of appropriation as the guiding rule. Indian law, both in the Indus commission report and other earlier cases, held that existing uses were to be given superiority of right. Customary international law, such as the Helsinki Rules (International Law Association: ILA 1967), includes existing and reasonable uses as an important consideration in equitable apportionment.¹⁰⁸ KWDT-I held that protecting the existing uses is preferred over contemplated uses, unless the latter offers benefits outweighing the former. Thus, the historical geography of utilization was a central factor in adjudicating the Krishna dispute. KWDT-I recognized that all projects reasonably committed until the September 1960 interstate conference were to be protected. This was when Mysore and Maharashtra insisted on *de novo* allocation of Krishna waters. KWDT-I encouraged the states to arrive at mutual

¹⁰⁶ The central coastal districts of AP in the Krishna basin and delta areas were one of the first sites to experience irrigation development, way back in the late 19th and early 20th century. See Ranga (1926), Washbrook (1973), Upadhyaya (1988a, 1988b) for an interesting account of early irrigation development, accompanied capital accumulation, and associated politics in coastal Andhra districts.

¹⁰⁷ The exception noted was the case *Nebraska vs. Wyoming*, where junior uses of Colorado were preferred to senior uses of Nebraska. The exceptions were not about whether existing uses had to be protected or not, but about within the existing uses: whether the recent or earlier should be protected. Here the criteria of which use was more beneficial prevailed in the decision making.

¹⁰⁸ The later and refined rules of ILA, the Berlin Rules (ILA 2004), also held similar position with respect to existing uses.

agreement, which they did eventually. The tribunal did not rule on these projects, but the states arrived at a collective agreement on the list of projects to be protected in their respective states. In other projects where the states disagreed, they were resolved by the tribunal's rulings. These were: the Krishna project on the Venna river in Maharashtra, the Gokak canal in Mysore, allocations for the Srisaïlam and Nagarjunasagar projects, and protection for Krishna Delta Canals. The same benchmark was used largely in these rulings: the projects that began construction before the 1960 reference point were to be preferred against contemplated uses.

In a couple of instances, the tribunal had to deviate from this norm. These instances further substantiate the discretionary and subjective nature of adjudication. AP had gone ahead with the Srisaïlam project in spite of formal protests from Maharashtra and Mysore in 1960 against it. AP took up the project following permission and sanction from the Planning Commission, after 1960. The tribunal refused to provide protection against evapotranspiration losses on the grounds that the state disregarded the protests of co-riparian states. In the Nagarjunasagar project, the tribunal allowed construction of crest gates in spite of the Planning Commission's refusal to the state on the grounds that AP needed carryover storage capacity.¹⁰⁹ In the case of some other projects, the Tungabhadra agreements during colonial rule provided the basis for preferential allocation, for example, the Bhadra Reservoir Project, the Tungabhadra Left Bank Canal project, and the Vijayanagar Channels in Mysore. Similarly, the issue of minor irrigation works (using less than 1 TMC annually) to be protected by prior appropriation rights was resolved again through mutual agreement between the states. The states prepared a

¹⁰⁹ This is another specific characteristic of allocation of waters over rainfed rivers like Krishna. In order to exploit the water available to the maximum extent, the tribunal ruled that the states should be allowed to construct carryover storage capacities. This additional augmentation capacity sometimes allows states, particularly the upstream states, to store more water than their allocation, which could lead to contestation.

list of the projects to be preferred over contemplated uses in equitable apportionment of Krishna waters.

Protecting prior appropriation rights required prioritization, which introduced a form of inequity that had to be addressed for equitable apportionment. An added complexity was the spatial association of these projects, which were already in place and operational. They were identified sub-basin wise (K1-K12 – see Figure10) to apply protection by prior appropriation rights. These spatially-fixed works led to uneven distribution of irrigation benefits, both across and within the states (across regions). This unevenness created spatial inequities, which would further perpetuate the historically uneven irrigation developments. Such unevenness was often a source of frequent contestation over the distribution of water, which according to the actors then warranted political mobilization.

4.7.4. Technical ambiguities and limitations

Resolution of interstate water disputes is also affected by many technical ambiguities and limitations. These are primarily associated with the limitations of technical knowledge in addressing the uncertainties of water availability over time and space. These constraints generate ambiguities over which the states engage in fierce battles. The tribunals adopted different strategies to resolve these issues, often through facilitating mutual negotiations and agreements. I discuss some such instances below.

The dependable flow, the available water to be apportioned among the states, had serious data limitations during the KWDT-I. The conventional method of estimating yield using the rainfall-runoff relation could not be used for lack of systematic data. Instead, estimates based on the flow at the final draining point, the weir in Vijayawada, were used to estimate the dependable flow. Flow observations at the Vijayawada weir too were not consistent and

adequate enough to estimate dependable flow without disagreements. The weir in Vijayawada was commissioned in the 1850s and had both gone through modifications and suffered damage from floods. In the absence of reliable data, the states had prolonged arguments over calculated flow estimates and the accuracy of the parameters involved. The tribunal finally used the flow data series for 78 years, 1894-95 to 1970-71, less than the 100-year data series normatively needed, to determine the total water available annually in the river as 2060 TMC at 75% dependability. In order to bind the states over these estimates, the tribunal had the states sign an agreement to this effect.

It is a matter of great satisfaction that the dispute on a very crucial matter in the case which had been the subject matter of serious controversy between the parties and which was mainly responsible for the prolongation of the trial in this case has been thus satisfactorily resolved.

We place on record our appreciation of this attitude adopted by the parties. (KWDT-I 1973: 81, underlined emphasis in the original).

The states, however, had persisting differences on related issues. During explanatory deliberations, Karnataka demanded distributing excess waters above 75% dependability flow in surplus years (KWDT-I 1976, 23). The tribunal refused this argument on the grounds of technological limitations in making it feasible.

This redistribution of water in excess of 75% dependability had to be addressed by the KWDT-II. It had the advantage of better data and attempted a similar approach to that of KWDT-I. It sought redistribution proposals from the states. The proposals were along expected lines, to suit each state's interests. The upstream states estimated higher availability of water while AP, the farthest downstream, submitted that there was no additional water for distribution (KWDT-II 2010, p.236). The tribunal finally used the 47-year data series from 1960-61 to 2007-08 for estimating the yield in the river, and the surplus waters to be

redistributed.¹¹⁰ The new data series produced an average yield of 2578 TMC (theoretically the upper limit for the river yield); the 65% dependability yield at 2293 TMC; and, the 75% dependability yield at 2173 TMC – an excess of 113 TMC from the 2060 TMC estimated by the KWDT-I. This excess could be either due to better and more accurate data, or it accounted for return flows (KWDT-II 2010, 320-21).¹¹¹ By 2006-07, the total utilization by the three states at 2313.06 TMC exceeded the 75% dependability yield. The states had also achieved considerable levels of carryover storage capacity. The average yield was also high at 2578 TMC. Keeping in view these improved yield conditions and carryover capacities, KWDT-II decided apportioning at 65% dependability yield (2293 TMC). The tribunal also ruled that the allocations by KWDT-I at 2130 TMC (2060 TMC allocated + return flows of 70 TMC), would be protected. This left 163 TMC (this allocated 2130 TMC deducted from the 65% dependable 2293 TMC) of additional water. The tribunal took up the task of allocating surplus waters above 65% dependability flow as well. The surplus water was the difference between the average yield of 2578 TMC and the 65% dependability flow of 2293 TMC, i.e., 285 TMC.

The surplus waters component was the other frequent issue of contention between states. KWDT-I allowed use of surplus waters by AP (without acquiring any right) to account for technology limitations in assessing accurate yields and to address adverse impacts on the downstream state due to possible deficit in some years (75% dependability = 25 deficit years in 100 years). This remained an issue of conflict between the states throughout the operational period of the KWDT-I award until the 2000 review. In the 30 issues framed by

¹¹⁰ The flow data from 1950-51 to 1960-61 data was anyway unusable as the barrage at Vijayawada suffered a breach during this period.

¹¹¹ Return flow is the portion of water that rejoins the river after its use, mostly from irrigation.

the KWDT-II, five issues were about surplus waters, essentially seeking their redistribution. The two upstream states accused AP of creating permanent structures for utilizing surplus waters (KWDT-II 2010, 150-156). The conflict culminated when Karnataka approaching the Supreme Court in 1997, requesting implementation of Scheme B for creating an implementation mechanism, a Krishna Valley Authority (KVA, see below for further discussion), which had been recommended by the KWDT-I.¹¹² Karnataka demanded that until the Scheme B was implemented, AP should not be allowed to use surplus waters. In response, AP filed another suit challenging the Supreme Court's admission, as the IRWDA 1956 and Article 262 barred the jurisdiction of the Supreme Court in these matters.¹¹³ The two suits eventually led to the Supreme Court recommending constitution of the KWDT-II. KWDT-II had to address more than one issue related to reassessment and reallocation of surplus waters. But the central issue was around the apprehensions of the upstream states about surplus waters. Maharashtra and Karnataka accused AP of creating permanent facilities for using surplus waters with plans to claim rights at a later stage. KWDT-II assured and reasserted that AP would not have any rights over the use of surplus waters, and set out on allocating them between the three states (KWDT-II 2010, 677-678). There is more to this component of surplus waters, which was the difference between the average yield of the river and the 65% dependability yield. There still remained what the tribunal termed as 'remaining waters': the component of waters excess of the average yield. KWDT-II allowed AP to utilize these waters using the same rationale as that offered by the KWDT-I - to compensate for the

¹¹² Original Suit No. 1 of 1997 (state of Karnataka vs. state of AP and others). The Suit also requested restraints on AP's implementation of other projects – Telugu Ganga, Srisailem Right Bank Canal, Srisailem Left Bank Canal Bhima Lift Irrigation and Pulichintala project – which were later referred to the KWDT-II.

¹¹³ Original Suit No. 2 of 1997 (state of AP vs state of Karnataka and others). The suit also sought relief from Karnataka's proposed increase of Almatti dam.

risks assumed by the downstream state (KWDT-II 2010, 806). This remained contentious, with the upstream states bringing it up in the subsequent explanatory hearings as well. The tribunal clarified that AP would be free to utilize it without acquiring any right; and that the states could stake claims on this component when a competent authority was put in place at a later stage (KWDT-II 2013, 46-47).

Two other technical issues suffered from similar ambiguities. One of them was groundwater – both tribunals chose not to consider this in allocations. But groundwater could be a critical issue in the future, which might well lead to disputes. The increasingly stressed levels in the Krishna basin are likely to pose a challenge in the future (Venot et al. 2008). Groundwater abstraction rights in India were linked to land ownership; KWDT-I ruled that the states would be free to use groundwater within their respective territories, in a manner that it would not affect rights of private individuals, bodies, or authorities. The tribunal noted the lack of systematic data for groundwater and decided not to deal with its apportionment. The tribunal did ask the states not to use groundwater as an alternative means for meeting their needs (KWDT-I 1973, 71-72). Curiously, the KWDT-II did not even consider groundwater as an issue.

The second issue concerned the return flow component, where data and knowledge for allocation posed great challenges for the KWDT-I. The states had differing positions regarding return flow, again to suit their respective advantages. Maharashtra argued that the return flow could be in the order of 30 to 40% and rejoining the river within a short time. Mysore was uncertain about both the method of estimation of return flow and the duration after which it would rejoin the river. AP argued that it should not be considered as a component in apportionment. KWDT-I relied on international experiences and earlier studies in the Krishna basin to determine that the return flow in the basin varied between 4-10% of

water diverted for irrigation. It also drew on experts' testimonies to determine that the return flow from new irrigation projects would appear within 5 years after the projects became operational. The challenge was to apportion the 75% dependable flow as it gets augmented – which in turn contributes to return flows. The return flows would accumulate as the utilization of the river increased through new irrigation projects. When KWDT-I adjudicated the dispute, Krishna river waters were not fully utilized. The incremental utilization would generate return flows, which would be augmented to the 75% dependability flow of 2060 TMC and had to be apportioned as well. The tribunal-facilitated deliberations between the states led to an agreement about acceptable method for estimating return flow, a percentage of utilization by new irrigation projects using 3 TMC or more. The states also agreed to abide by the tribunal's assessment of return flow percentage. The tribunal determined that 7.5% of utilization by new irrigation projects (exceeding 3 TMC use) operationalized after the year 1968-69 would appear as return flow after every 5 years. This return flow proportion was later modified to 10%, after the explanatory hearings (KWDT-I 1976, p.20). This proportion of return flow would be added to the already allocated waters every 5 years to generate new apportionments. The final award accordingly included these incremental additions of return flow to be calculated after every 5 years to be added to the 75% dependable flow allocations. The states agreed to use records of existing utilization levels, annual records of new projects, percentage of return flows from projects other than irrigation use, etc.

4.7.5. The illusive and elusive nature of equitable apportionment: Contextual, contingent, and contentious

Equitable apportionment had to be accomplished through all the restraints and restrictions set by the preferential allocations, spatial fixities, technological limitations, disputable diversions, etc. These ruled out equitable apportionment being a simple allocation of

available water resources, and posed the challenge of reconciling the uneven and differential geographies. This had to be achieved within small and highly contested margins. For KWDT-I, out of the 75% dependable flow of 2200 TMC to be allocated, 1693 TMC was already protected or preferred. And the KWDT-II had to allocate the eked out and limited quantities of 163 TMC from 65% dependability flows, on top of the already protected KWDT-I allocations. Moreover, KWDT-II also had to allocate the difficult component of surplus waters.

The states were combative in their demands. KWDT-I sought proposals from each state about approaching equitable apportionment. Each state proposed a method that suited its own interests. Maharashtra considered the following factors: drainage contributions to the basin, water-scarce areas, cultivatable area, and population within the basin. Maharashtra proposed the following allocations based on these criteria: Maharashtra-908 TMC, Mysore-865 TMC, and AP – 427 TMC. Karnataka (then Mysore) used its own criteria to demand an allocation of 1430 TMC for its annual requirements. AP argued for protecting its existing uses given its extensive reliance on irrigated agriculture by virtue of its historically advanced development. AP proposed three categories of prioritization while applying equitable apportionment principles: utilization up to 1951 (interstate conference organized by planning commission); utilization between 1951 and 1960 as part of preferential allocation (when formal protests were made); and those projects contemplated after 1960. AP demanded that the residual waters after setting aside the first two categories had to be allocated equitably among the states, while staking its own claim to as high as 2000 TMC. The claims far exceeded the available water of 2200 TMC. This competition was much more strident and contentious before the KWDT-II. By that time, the states utilized the KWDT-I allocated resources: by 2005-06, Maharashtra, Karnataka, and AP utilization levels were close to 564, 696, and over

1000 TMC respectively. The three states presented ambitious irrigation master plans, which combined demanded close to 4800 TMC (KWDT-II 2010, 744), against the available waters of 2293 TMC at 65% dependability. As per the award decided by the KWDT-I, the allocations under its award remained protected, leaving a limited 163 TMC for allocating among the states. Besides this 65% dependable flow component, the tribunal also allocated shares of surplus waters, estimated as an additional 285 TMC.

Equitable apportionment via addressing inequities

The KWDT-I award offered a useful and critical discussion about applying equitable apportionment in interstate water resources sharing. Justice Bachawat's exposition of equitable apportionment is a classical reference in its contingent approach in the context of India, and more broadly as well. He reviewed the relevant body of literature, especially Indian and international customary law, including the range of known principles from the Helsinki Rules to the Berlin Rules. Ultimately KWDT-I felt that there could not be a universal method and preferred a highly contextual and contingent approach for equitable apportionment: "There is no mechanical formula of equitable apportionment applicable to all rivers. Each river system has its own peculiarities" (KWDT-I 1973, 93). And, "The weight to be given to a relevant factor is a matter of judgment on the pertinent facts of the particular case and no hard and fast rule can be laid down" (KWDT-I 1973, 94). Further, "...it will be needless endeavour on our part to search for a formula which may assist us in dividing the waters of the river Krishna" (Ibid, 174). The conceptual notion of equity might vary depending on the ecology, or historical trajectories of utilization, or politics. River systems could vary in the availability of water and priority of uses. In some river systems, there might be greater reliance on storage, while in others it is little or none. In some basins, party states might prefer water sharing based on cooperation and trade-offs. In others, the preference

might be for clear specification of allocations. In other words, the approach had to be evolved and tailored for each basin, taking into consideration its contextual parameters and unique characteristics. The approach sought to achieve an acceptable order of equity through managing inequities by applying a discretionary case-by-case rationale.

KWDT-II also emphatically reiterated this approach. For it considered the relative needs of the states in allocation of shares. One of the primary factors for KWDT-II was the extent to which the proposed use addressed drought-prone areas' needs. This also had to engage with complex questions of whether the extent of drought prone-regions within only the basin should be factored in, or instead the drought-prone areas of the entire state. The tribunal recognized that while these different factors were all-important, there could not be any strict formula or setting of priorities for any use. The tribunal took heed of the needs and claims, historical trajectories, and geographies of irrigation of these states; yet, especially given that resources available were limited, the tribunal desisted from identifying any singular or specific sets of parameters in its allocation. Instead, it chose a highly contextual and project-specific assessment in allocating the limited resources.¹¹⁴ The following discussion provides some understanding about how the tribunals had pursued equitable apportionment.

Before KWDT-I, the historically driven uneven development among the states was one of the primary challenges posed. The upstream states of Maharashtra and Mysore appealed strenuously about potential perpetuation of inequities if the tribunal awarded any further allocations to AP, which had advanced irrigation development and a large proportion of uses already under protected categorization. The two states argued that they could not augment

¹¹⁴ In a loosely constructed description of its approach, KWDT-II distinguished its principles of equitable apportionment from a strict formula of percentages as: "... on consideration of need and the comparative facts and circumstances prevailing in different states." (KWDT-II 2013, 44).

Krishna waters in the past in spite of their needs, and they would be entitled to do so had they been allocated waters equitably earlier. But the tribunal asserted that the allocation was happening in the conditions and circumstances present at the time of proceedings, and therefore it was bound to protect earlier uses and consider the needs as they stood. KWDT-I not only protected AP's existing uses but also awarded additional allocations considering its needs. KWDT-I also noted that in the future with improved data, the dependable flow might be greater, as its estimates were conservative. The tribunal wanted to ensure equitable allocations once better estimates would be available.

In order to allow for review and reallocation after the expiry of its award, KWDT-I provided for the following. One, it restrained the upstream states of Maharashtra and Karnataka from using any more water than that was allocated in its award. Two, the tribunal permitted AP to use surplus waters, but without acquiring any rights over the waters that it could claim in the future. The restrictions on upstream states were to prevent claiming rights over waters beyond their allocated shares. The allowance to the downstream state of AP was to manage any inevitable inequity that the state of AP might suffer, since the flow of 75% dependability would statistically leave 25 years of deficit flow. The tribunal also permitted the state to create carryover capacities for utilizing any surplus waters. Similar provisions were made by the KWDT-II as well. This tribunal's decision to reallocate at 65% dependability was on the basis of improved storage facilities in the states compared to the era of the KWDT-I.

The states were not exactly content with these findings, and challenged this approach of managing inequities on many occasions. Before KWDT-II, AP claimed that the 'success rate' (of realizing its allocation share) had been only 68%, whereas the two upstream states had a success rate of close to 100% over the 47 years. The tribunal refused to accept AP's claim about higher success rates for the upstream states, and specified the concessions that AP

received with respect to utilization of surplus waters and carryover storage allowances to address its alleged poor ‘success rate.’ (KWDT-II 2010, 433).

In its allocations, KWDT-II’s first priority was not to disturb KWDT-I allocations inasmuch as possible. To this end, it decided to ensure 150 TMC of carryover storage to AP. Later, following on the earlier determinations and its crucial importance of its importance in addressing drought conditions in the state, it considered allocations to Almatti dam. The tribunal earlier decided to allow increased storage of up to 303 TMC; the dam already had an allocation of 173 TMC from KWDT-I allocations (75% dependable flow), it made an additional allocation of 25 TMC from 65% dependable flow, and the remainder of 105 TMC (303-173-25) from surplus flows. It went about allocations on a case-by-case basis, often giving importance to the critical nature of the claim of the states.

The challenge of equitable apportionment was not restricted to managing spatial inequities, but extended to temporal inequities as well. Ensuring that the allocations reach their destinations in time was a vital consideration. For instance, AP sought regulating release of waters from the Almatti dam to ensure the timely arrival of water for crops in downstream AP in the event that Karnataka was allowed to increased storage in the dam’s reservoir. In a separate issue, KWDT-II ruled in favor of increased Almatti dam storage. The tribunal agreed with AP’s contention about possible delays in arrival of waters, and instructed Karnataka to release 8 to 10 TMC of water from the Almatti to AP during the months of June and July (KWDT-II 2010, 698).

The final allocations by the tribunal, after minor modifications during further report deliberations, stand as Table 2 shows:

Table 2: Final allocations by the KWDT-II

Component	Allocations to states (in TMC)		
	Maharashtra	Karnataka	AP
75% dependability allocations (KWDT-I) allocations including return flows	585	734	811
65% dependability allocations	43	61	43
Surplus flows	35	105	145
Total	663	900	999
Minimum flows from 65% dependability	3	7	6
Grand total	666	907	1005

Source: KWDT-II 2013, 402.

4.7.6. Contextual and contingent approach: The Spatialized politics of equity

This contingent, contextual, and discretionary approach in equitable apportionment is not an exclusive feature of interstate water disputes. In spite of the highly refined and developed principles for equitable apportionment, international water conflicts too resorted to such contingent approaches. The characteristics of local settings had an important bearing in the application of equity principles. Though conflicts emerged on the grounds of legal riparian rights, the resolution shifted to needs-based criteria for water allocations (Wolf 1999). This was the case in interstate water disputes as well; the Krishna dispute was no exception.

The needs-based criteria were central to the tribunals' approach and they did so by examining each state's demands on a case-by-case basis. KWDT-I allowed an additional 50.84 TMC to AP on top of already protected uses of 749.16 TMC, making its total allocation 800 TMC. In this additional allocation, 33 TMC was allowed for the Srisaïlam project as it served critical purpose of carryover storage and also accounts for losses due to evaporation. AP received the other additional allocation of 17.84 TMC on account of the Jurala Irrigation Project Stage-1. The tribunal considered the historical conditions of its merger with parts of Madras presidency after the states' reorganization, and felt that the Telangana region in AP should not be deprived of irrigation simply because the rest of the state had advanced irrigation development. This was another unique feature of equitable apportionment in interstater water

disputes. It addressed regional imbalances within a state. Interestingly, the tribunal further stressed that in the eventuality that the Jurala projects turned out to be infeasible, the allocated water had to be augmented in the Telangana region alone, and not anywhere else in the state. In no other allocations were such specifications made. Instead, it explicitly declared that though allocations were for some specifically contemplated projects, the actual augmentation might not necessarily be restricted to those projects alone. The states could use waters as and where they would be appropriate. Thus, the notion of territory in allocations and defining rights was made subject to boundaries articulated by regional geopolitical imaginations. Here, while state level allocations were being made, regional unevenness in irrigation development mattered in defining equity, and this required defining another boundary differentiating regional imbalances. This unevenness and difference was at the center of Telangana separatism, which has now led to the creation of a new state (Simhadri 1997). It is pertinent to note how politics emerge around inequities and asymmetries. But then this could be an exceptional case where such asymmetries aligned with other boundaries of differentiation and led to politicization and, eventually, the escalation of agitation towards the goal of Telangana statehood (Srikanth 2013).

Thus, in enacting equity, space had to be treated as a fragmented as well as consolidated – contingent to politics and political mobilization around this spatial differentiation. The geographical imaginations represented by cartographic representations could be contested by other geopolitical imaginations of sub-national identities. When these identities were articulated adequately and substantively, the differentiations had to be addressed by equity concerns. This contingent nature of equitable apportionment to geopolitical imaginations makes these issues deeply elusive and highly contentious, prone to politicization and political mobilization.

The tribunals frequently employed this spatial fragmentation to address equity concerns. In order to safeguard AP's interests and ensure adequate flow in the Krishna's main stream, KWDT-I imposed restrictions on uses in sub-basins adjoining the main tributaries, the Bhima and Tungabhadra. KWDT-I put restrictions on further augmentation in K-5, K-8, and K-9 sub-basins, spread over all three states.¹¹⁵ In some sub-basins, it placed limits for maximum augmentation. The KWDT-II also concurred with such restrictions, though it agreed that restrictions could be reviewed if new evidence emerges about greater availability of water in the respective basins (KWDT-II 2010, 596, 704). KWDT-II in fact relaxed some restrictions in light of new evidence of availability of more water.¹¹⁶ But it also laid out some new restrictions – not just spatial, but also on the amount of water that could be drawn from different dependable flows, the timeliness of releases, etc.

This nature of contingent, contextual, and discretionary decision making has implications for transboundary politics. The deeply contextual nature of allocations does not subscribe to standard principles of equity, which leaves space for contestation. This can be seen in the manner the states responded to priority ascribed to existing uses. The states acquiesced to the tribunals' rulings temporarily, but they carried forward their perceptions about not having received a fair share. These perceptions provide for the politicization of water sharing, especially during distress times of low rainfall. These factors impact the implementation of tribunal awards, leading to noncompliance or violation, in turn escalating conflict.

¹¹⁵ Some of these restrictions were relaxed partially but not fully upon appeal from states during explanatory hearings under section 5(3) of IRWD Act 1956 (KWDT-I 1976).

¹¹⁶ KWDT-II, with the advantage of a fresh series of data, determined that there was indeed more water available in K-8. It relaxed the restrictions imposed by KWDT-I and allowed projects proposed by Karnataka in the basin, after establishing that these did not adversely impact AP in any manner (KWDT-II 2010, 525-526).

4.7.7. Implementing tribunal awards: The crux of the conundrum

The crux of the interstate water disputes problem in India is often narrowed down to the noncompliance of the states (Iyer 2002, Chokkakula 2012, 2014). The institutional and governance failure in implementation— in legal parlance, giving effect to the awards — is the reason for recurrence of disputes (Chokkakula 2012). The failure is partly due to the historical conditions in which dispute resolution processes, as in IRWDA 1956, emerged. KWDT-I, having been the first tribunal in an independent India, closely engaged with this conundrum of implementation mechanisms. KWDT-I repeatedly relied on section 6 of the IRWDA 1956, which specifies that the implementation of the tribunal award would be made by the states themselves.¹¹⁷ This was supplemented by amendments in 1980 to the Act (section 6A), empowering the central government to formulate schemes with subsequent approval by the Parliament. But these amendments have not helped much and indeed have led to additional ambiguities. The later tribunals identify these limitations as constitutional anomalies that need to be resolved. CWDT (2007) does not think there is adequate clarity as to whether a tribunal has the authority to formulate a scheme; nonetheless, it recommends the Cauvery Management Board (CMB) to implement its award.¹¹⁸

KWDT-I did not look for separate mechanisms. Justice Bachawat interpreted the extant legal provisions to articulate an idealistic vision, one where the awards were to be implemented only through the voluntary and cooperative efforts of the states. Yet KWDT-I also recognized

¹¹⁷ Section 6(1): “The Central government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them.” (underlined emphasis by me).

¹¹⁸ CWDT relied on an earlier interpretation of the Narmada Water Dispute Tribunal in this respect (NWDT 1979). For a detailed discussion of related constitutional anomalies and how CWDT interpreted it as its responsibility to recommend CMB, see CWDT’s award (2007), Volume V, pages 216-223.

the need for an operational institutional mechanism to ensure effective implementation of the award. It recognized the practical difficulties in ensuring allocations prescribed to the states:

...while determining whether there is deficiency or surplus such an authority shall have to find out the utilisations made by all the states in a water year. This naturally involves a comprehensive collection of data regarding utilisations of all the states by that authority. There are bound to arise differences between the parties with regard to the quantity of water utilised by a party in a water year at one place or the other. The nature of the differences may be varied and unless the determination of utilisation made by that authority is made final and binding on the parties there will always be room for trouble. Again, when and how much water should be transferred from the reservoir of the upper states to meet the need of the lower state for use in a water year may be a cause of conflict between the parties and one or the other party may not be easily reconciled with the decision of the authority. (KWDT-I 1973, p.165, underlined emphasis mine.)

The conundrum of compliance by states cannot be described any better. This has remained the core of the problem, where the asymmetrical power differential of upstream vs. downstream perpetually creates conditions for conflict. Upstream states prefer to store for the contingency of water deficits, which results in downstream states suffering from delays in the arrival of water on which depends their agricultural cycle. Any delays lead to fear of deficit and distress in downstream states, triggering political mobilization. In such circumstances, law and technology fail to respond satisfactorily. Law can only set procedures, but cannot respond to contingencies and exigencies arising out of uncertainty in resource availability. Technology is simply inadequate to reduce the uncertainty. Combined together, these lead to states resorting to a nuanced classical prisoner's dilemma, where a lack of information leads to unsustainable outcomes – here, the undesirable conditions of conflict and politicization.

Institutions normally respond to such uncertainties by facilitating information exchange and ensuring coordinated efforts to cope with inherent risks. Interstate water disputes in India are hampered by an absence of such institutions, as is the case in international transboundary river basins (Milich and Varady 1999). KWDT-I recommended KVA for overseeing implementation of the award. But it finally decided not to insist on creation of the KVA, as it failed to acquire consensus from the states for its existence. While a KVA in Scheme B was not made mandatory, Scheme A, spelling out the allocation of shares, was mandatory.

Partly due to this, implementing the award remained central to the conflicts fought outside the two tribunals' ambit and purview. Karnataka and AP litigated before the Supreme Court over this. Many issues before KWDT-II also required addressing the non-existence of implementation mechanisms. Though KWDT-II concurred with the idea that responsibility lies with the states in 'giving effect' to the awards, it also realized that an implementation mechanism had to be in place for better compliance by the states. The KWDT-II conceived and detailed a Krishna Waters Decision – Implementation Board (KWDIB) for implementing its award. Even though it was emphatic in framing it, the tribunal still did not make it mandatory (KWDT-II 2010, 795).

Constitutional ambiguities and institutional inertia contributed further to the complexity of the challenge of implementation. When the question of ensuring the less-reliable 65% dependability flows and the allocation of surplus water was encountered, the competitive and mistrustful nature of interstate relations was fully on display. The uncertainty in the availability of water increases with the decreasing dependability. Hence a 65% dependability and estimated surplus flow allocations are much more uncertain. There is no foolproof method to predict precisely the total quantity of water that would be available in the river. If an upstream state is allowed to augment its share first, the downstream states may not realize

their shares fully – especially in the event that the total flow falls short of the 65% dependability criterion. Indeed this was AP's primary apprehension. Hence, the tribunal laid down a scheme, somewhat unprecedented, for ensuring equitable allocations - that is, for distributing risks associated with uncertain flows (KWDT-II 2013, 404-413). The tribunal shared the proposal beforehand, hoping to achieve a mutually acceptable arrangement. The states met twice formally, but did not reach any agreement. The tribunal discussed it during formal deliberations, then finalized it.

Under the scheme, the tribunal allowed simultaneous withdrawal of 75% dependability allocations by the states in the first instance. In the second instance, the upper riparian states were restricted from augmenting their 65% dependability allocations until downstream states fully realized their 75% dependability allocations. In the third instance, upstream states could not augment their surplus flow allocations until downstream states realized their 65% dependability allocations. For instance, Karnataka would not be allowed to augment its share from the 65% dependability share of 61 TMC (above its 75% dependability share of 734 TMC) until it ensured AP fully realizing its 75% dependability share of 811 TMC. Karnataka fought this scheme strenuously before the tribunal on the following grounds: (i) in some years, it might be too late for upper riparian states by the time AP realized its share; (ii) AP might not have adequate storage for using water at the required time, and the water would then be wasted. These anxieties and apprehensions led to modifications in this scheme. Interestingly these modifications sought coordinated cooperation between the states. For instance, a new sub-clause added reads as follows [Clause IX-A: Part-1: 2(ii)(b)]:

Notwithstanding anything contained in sub clauses (i) and (ii)(a) of Clause 2 above, the three riparian states, in the light of the opinion of their experts about the assessment of expected rains, or otherwise, in the best of the spirit of cooperation and share and care to achieve their share fairly and smoothly, are free to make any other arrangement by means of a written agreement amongst the three states, in respect of the manner of withdrawal as to at what point of time they may draw their share in full or in parts thereof, at 65% dependability. (KWDT-II 2013, 406-407, underlined emphasis mine)

I want to highlight the fragility of the implementation mechanisms and the critical reliance on the element of cooperation and coordination, particularly on the margins of distress years, when ensuring that the states realize allocated shares hinges on the ability to forge transboundary coordination and collaboration. In spite of the prolonged adjudication and elaborate techno-legal specifications, mechanisms finally rely on the weak link of cooperative spirit between the states.¹¹⁹ In the absence of political and institutional space for nurturing this collaboration, these transboundary marginal spaces transform into spaces of contention and contestation – often providing avenues for politicization and political mobilization (Chokkakula, 2014).

4.8. Concluding discussion

In this chapter, I attempt to dissect the political anatomy of the Krishna river water dispute. The primary objective is to trace the historical construction of the asymmetries and ambiguities in its making, and their contribution to the antagonistic politics. I show that a transboundary river water dispute entails enduring conditions for enabling contestation. These conditions, combined with transforming geographies and ecologies, rule out permanent

¹¹⁹ The detailed mechanism also included an additional part specifying the procedure for real time ascertainment and exchanging of use and forecasting of available waters to support this coordination between the riparian states (KWDT-II 2013, 409-413).

resolution. But these conditions also offer avenues and inspire opportunities for animating transboundary politics. In the presence of responsive and democratic constituencies, the transboundary politics of river water disputes are prone to politicization. These conditions can be organized into three categories: (a) historical and structural conditions; (ii) the elusive nature of equitable apportionment; and (iii) the conundrum of compliance by the states. I present my conclusions about these conditions below. Besides these, an analysis of the Krishna dispute through the two tribunals' awards set apart by 30 years provides a sense of the changing nature of the dispute as well as transforming interstate relations. I also discuss some insights presented by the analysis about the changing nature of interstate relations.

4.8.1. The political ecology of perennial conflict

The historical-geographic specificity of India has had an important bearing in the making of the Krishna water dispute. The asymmetrical power relations between the directly ruled presidencies and the indirectly ruled princely states remained deeply entrenched in the water sharing agreements between these constituents. Prejudiced agreements such as the Tungabhadra-related agreements made during colonial rule, and other asymmetries in general, have led to uneven geographies of development. Reconciling with these uneven geographies has been a central challenge in adjudicating the dispute after independence. This structural feature created by law and geography in sustaining and reproducing colonial and imperial power relations has remained a marked underlying tension in interstate water disputes (D'Souza 2005, 2006). This is the deeper postcolonial condition of interstate water disputes in India.

The imprint of colonial power continued even after the power asymmetries reduced after India attained independence and the entities in dispute became constituents of a federal

nation. Principles of justice and obligations to protect existing uses preserved the uneven geographies between the states. This is the other feature of the postcolonial condition, which sustains colonial dispossession in spatial and material terms, differentiating from the socio-cultural understanding of postcoloniality (Harris 2004). In a way, my endeavor here has been to extend this understanding of postcolonial existence towards more dynamic and implicated features of postcoloniality: the politics triggered by the structural tensions and dispossessions, and their implications for interstate water disputes and the remaking of state in India. The analysis of the Krishna dispute reveals that these structural tensions manifest in myriad ways by offering avenues for contestation and political mobilization.

The other specific historical-geographic feature of India's interstate water disputes is the reorganization of the state boundaries. This boundary reorganization was a cartographic imaginary geography of a secular vision based on linguistic homogeneity. But the exercise was not entirely successful in eliding the imprints of colonial and imperial histories, for the uneven geographies remained difficult to harmonize and led to contentious politics, e.g., regional imbalances instigating a separatist movement within AP. The state boundary reorganization also restructured hydrological regimes in the states – changing both entitlements and cultural relations. The changed entitlements advantaged some and disadvantaged others in these states. The uneven outcomes and marginalized needs remained, and represent other avenues for emergence of contentious politics in interstate water disputes.

Drawing on the analysis of disputes and the underlying contentious issues from the two tribunal awards helped in distilling the sources and factors contributing to disputation and the politics involved. The politics reveal a series of sources of conflict other than the above-discussed historical and structural postcolonial conditions. These include a set of techno-legal factors such as the protection of prior appropriation rights, technical limitations and

ambiguities, changing priorities of water uses, competing interests and conflicting strategies of states, etc. The adjudication of these disputes also reveals highly contingent, context-specific, and discretionary decision making by the tribunals, which itself remains a potential source of contestation by and among the states.

4.8.2. Equitable apportionment: A fuzzy concept

Equitable apportionment in transboundary water conflicts has a long history and formidable body of work (Chokkakula 2012, Salman 2007). Yet the application of these principles is highly contextual and locally determined (Wolf 1999). The two tribunals of the Krishna dispute drew extensively on this body of work as well as relevant international and Indian customary law. Yet their application of the equity principles is a seminal contribution on its own, and highlights how it has to be deeply contextual, contingent, and discretionary on the basis of the critical needs of the parties involved. The awards of the two tribunals are also distinct contributions to transboundary water-sharing law on their own, for they showcase how the principles have to be reinterpreted in a context of a federal nation-state containing distinct semi-sovereign geographic entities. This changing context adds an entirely different set of complexities in the application of equitable apportionments. Within the particular context of transboundary sharing between federal units, the idea of equity is also bound to change with time, with the changed context of use and other contingent factors. These changes challenge established understanding of equity, and demand reprioritization and reallocation. The adjudication of the Krishna dispute 30 years apart revealed these changed and changing priorities and equity considerations, e.g., the elevated priority given to power generation by KWDT-II compared to agricultural production by KWDT-I, hence allowing additional westward diversions of Krishna waters for the Koyna project in Maharashtra.

The tribunals recognize that Krishna basin-specific equity considerations are not going to ‘endure forever.’ Hence both tribunals provided for a review of their respective awards after certain period. As observed by KWDT-I: “...population, engineering, economic, irrigation and other conditions constantly change and with changing conditions new demands for water continually arise. A water allocation may become inequitable when the circumstances, conditions and water needs upon which it was based are substantially altered” (KWDT-I 1973, 158).¹²⁰ In light of these changed perceptions of equity, the aleatory nature underlying the equitable apportionment employed by the tribunals leaves space for contestations and political mobilization.

The asymmetries, histories of prejudice and inequities, and the remaking of geography through boundary reorganization present a particular combination of factors that compellingly bring scale into the discussion. Equitable apportionment transforms into a process of managing inequities; and inequities at one particular scale are sought to be balanced at another scale, enabling multiscale politics and political mobilization. In an applied sense of boundaries as markers of difference (Smith 1992, Sparke 2009) generating politics of scale, the intersecting boundaries where the inequities are being managed generate a politics of scale. This can be seen in many instances of the Krishna dispute where boundaries intersected or were under tension. KWDT-I’s decision to account for the inequities around the Tungabhadra agreements when making the state level allocations is an

¹²⁰ The tribunal cited the US case law literature while making this observation, especially the case of *New Jersey vs. New York on Delaware water* and also Frankfurter and Landis (1925); the relevant text from this article may be illuminating and educative: “Wherever the pressure is felt one answer is clear: no one state can control the power to feed or to starve, possessed by a river flowing through several states. A great number of our streams have this potency. Moreover, there cannot be a definitive settlement. Population, engineering, irrigation conditions constantly change; they cannot be cast into a stable mould by adjudication or isolated acts of administration. The whole economic region must be the unit of adjustment; continuity of supervision the technique. Agreement among the affected states and the United states, with an administrative agency for continuous study and continuing action, is the legal institution alone adequate and adapted to the task.” (p.701)

example. Similarly, when the issues of diversions in or out of the Krishna basin were proposed, the tribunals' decisions brought in other constituencies and increased the scale of participation. KWDT-II allowed outside-basin diversions within the allocations to the state, thus bringing in the entire state's population as the constituency of mobilization. Similarly, when diversions for augmenting Krishna waters were allowed, KWDT-II allowed states to agitate and review for reallocations, again escalating the scale of political mobilization. Another instance of potential escalation of scale beyond the riparian states is the interstate agreement to provide for Chennai water supply. This was made possible partly through the active participation of the GoI, partly as an outcome of history of Chennai's earlier riparian rights (as part of Madras presidency), and partly attributable to the spirit of interstate cooperation.

4.8.3. Implementation of awards

Implementation of tribunal awards is a particularly tenuous space of contentious politics. The conundrum of compliance by states is largely a structural and historical condition of policy and the institutional vacuum for enabling implementation (Chokkakula 2013). The bar on the Supreme Court's jurisdiction in interstate water disputes leaves no redressal mechanism when states do not comply with awards. The constitutional ambiguities about setting up implementation mechanisms led to legislative and institutional inertia. Disputes recur because states often revert to noncompliance, particularly during distress years, largely in response to political expediencies. "States are after all political animals," the respected Senior Counsel for Karnataka, Fali Nariman observed.¹²¹ This was in the background of rather acrimonious and

¹²¹ Personal Communication, Fali Nariman, 30 August 2013.

prolonged argumentation over KWDT-II's proposed formula for allocation of 65% dependability and surplus flows.

Besides, the aleatory nature of the equitable apportionment, characterized by contextual, contingent, and discretionary decision making, allows the states to challenge these decisions – often when the political parties in governments change. The only source of redressal, the Supreme Court, is restrained in its interventions.

Changing federal politics also contribute to this conundrum. Increasingly assertive regional powers in the states and the trends of coalitional politics at the center make it difficult to impose rulings on states. In the absence of effective interstate coordination and acceptable mechanisms for sharing, there can be frequent recurrence of disputes, as witnessed in the recent episode of the Cauvery dispute, which occupied formal spaces and public political forums alike (Chokkakula, 2014).

Further, a stark contrast emerges when the proceedings of the two tribunals are compared. KWDT-II proceedings are far more litigatory and acrimonious, compared to those of KWDT-I. The general tenor of KWDT-I reflected Justice Bachawat's interpretation of IRWDA 1956 provisions, where the parties – the states themselves – would be responsible for giving effect to the award. Most decisions were taken after the states mutually negotiated and reached agreement, under somewhat paternal supervision by the tribunal. But this changed before the KWDT-II. It may be attributed partly to the changes in law. In the interim between the two tribunals, the amendments to the IRWDA 1956 made the central government and the parliament responsible for implementation. The character of the proceedings has changed to competitive and litigatory, sometimes employing technically complex legal strategies to further complicate adjudication. The tribunal had to often resort to reprimanding counsel on

these accounts.¹²² The tribunal grievously lamented the absence of the spirit of cooperation, and reflected on the changing interstate relations (KWDT-II 2010: 162-163). I attended the tribunal proceedings during the months of April-August 2013, when it was hearing clarificatory arguments. I witnessed more than once how intense argumentation by states' counsel received judges' admonishment and reprimand. One example: during arguments about highly difficult and complex issue of implementing distribution of the additional waters available under 65% dependability, the counsel for Karnataka sought to ensure the state's right to its share during distress years. The mechanism put in place by the tribunal allows the downstream states first rights over the upstream states in using additional waters allocated. Karnataka's counsel argued that during distress years, the tribunal might be failing in its duty to protect the right granted by its own award.¹²³ One of the judges of the tribunal, exasperated by prolonged argumentation by lawyers in these proceedings, observed "If states behave like states, there is no issue. But if states start behaving like private litigants, we encounter problems."¹²⁴

I also interacted with state functionaries participating in the adjudication process. The interpersonal relations were cordial among the lawyers and the technocrats attending the proceedings. But they gave a sense of having little choice in how they conducted themselves

¹²² For instance, while opening the arguments, Karnataka's senior counsel, Fali Nariman, among others, argued that the tribunal should restrict to the final order published in the gazette and not the findings used to arrive at the decision, which would effectively widen the scope of the investigation of the tribunal (KWDT-II). The tribunal disagreed with this interpretation and recorded their displeasure over this approach: "We would like to observe that the state of Karnataka would perhaps have been better advised to avoid taking such hyper-technical points which, on the face of it also, is not sustainable. It also indicates the mind-set of the state-party with which it is dealing with the matter, that is to say, purely as ad [*sic*] adversarial litigation tooth and nail. To begin with such an attitude is indicative of the fact well in advance that any settlement amongst the parties on disputed issues is a far cry." (KWDT-II 2010: 210-211).

¹²³ Proceedings of KWDT-II, May 2013. The counsel argued that the share of additional waters from 65% dependability might not be realized during distress years. Thus, the tribunal was at the risk of failing its own order by insisting on allowing the downstream state using its allocation first. This was difficult argument and the judges were at loss to respond.

¹²⁴ Proceedings of KWDT-II, 30 August 2013.

in the tribunal because of the adversarial nature of the adjudication. Political pressures and expediencies back home in their respective states compel such an approach. Any sign of complacency or agreement would be seen as a sign of compromising the state's interests. They would first be subjected to media trial and later censure by political leaders. Indeed, I used to read such reports in the vernacular local newspapers the very next day after the arguments, usually in the Telugu newspapers that I can read. The reports range from accusing lawyers of putting up weak defenses to accusing technocrats of ill-preparedness. The coverage reflects the proximity of the public imagination in interstate water disputes politics. The nexus of water disputes politics and the popular politics of mobilization is far deeper than may first appear.

Chapter 5: The Krishna river's transboundary political spaces

The previous chapter showed how the political ecology of interstate water disputes offers perennial avenues for contestation and induces their propensity to recur frequently. The specific structural and historical conditions, power asymmetries, and other ambiguities in interstate water disputes contribute to a proliferation of antagonistic politics and politicization in interstate water disputes. Politicization of interstate water disputes is now a tacitly understood and recognized avenue for political mobilization that offers electoral benefits. It is not that the politics are void of concerns, but water disputes offer effective and substantive grounds for political mobilization. In spite of the rigorous process of adjudication over a long duration, when the KWDT-II delivered its award in 2010 and its Further Report (after explanatory hearings) on 29 November 2013, the political actors in the downstream states of Karnataka and AP complained vociferously of unsatisfactory outcomes. Both state governments led all-party delegations to make representations to the central government. AP claimed injustice to the state and challenged the basis and rationale of allocating surplus waters. It argued that "...the decision resulted in inequity in allocations and unsettled many of the settled issues."¹²⁵ The state decided to challenge the award in the Supreme Court the very next day, November 30, and filed a Special Leave Petition (SLP) before the Supreme Court on 23 January 2014.¹²⁶ In Karnataka as well, soon after the award was given in November 2013, political leaders rejected the KWDT-II award and urged the government to

¹²⁵ <http://www.ndtv.com/article/south/andhra-pradesh-delegation-meets-prime-minister-manmohan-singh-over-krishna-water-row-460973> accessed 15 January 2014.

¹²⁶ <http://www.ndtv.com/article/south/andhra-pradesh-to-move-supreme-court-against-krishna-water-tribunal-award-452846> accessed 15 January 2014; and, <http://www.thehindu.com/news/national/karnataka/ap-challenges-second-krishna-tribunal-award/article5610975.ece?homepage=true> accessed 24 January 2014.

reject it. The opposition leaders in Karnataka also sought to challenge the award through an SLP by the state.¹²⁷

These reactions, especially from mainstream political parties, are neither unusual nor exclusive to the Krishna dispute. In recent times, the spectacle of political grand posturing and maneuvering is best showcased by the Cauvery dispute, perhaps the longest and most contentious dispute in independent India. In a recent paper, I have documented how the Cauvery dispute was politicized and escalated during 2012-13, a distress year. In this dispute too, historical asymmetries, legal ambiguities, and ethnic antagonisms enabled political mobilization (Chokkakula 2014). The GoI notified the CWDT award in February 2013, about six years after it was awarded in 2007. The CWDT had been adjudicating the dispute since 1990, for 17 long years. The notification of the award was a result of an exasperated fiat from the Supreme Court, after the downstream state of Tamil Nadu approached it repeatedly. The notification immediately provoked a set of predictable responses from political leaders. Deve Gowda, a former Prime Minister of India and the chief of Janata Dal (Secular) [JD(S)] party, a Karnataka based regional political party called the decision 'political.' He accused the UPA (United Progressive Alliance) government at the center of favoring Tamil Nadu to derive support from the AIADMK (All India Anna Dravida Munnetra Kazhagam), heading the government in Tamil Nadu. Before the award was notified, UPA had been accused of favoring Karnataka, delaying the notification to gain advantage in the just-concluded assembly elections in the state. Over the entire cropping season prior to the notification, all these political actors engaged in such fierce politicization of the dispute that often civic unrest

¹²⁷ http://www.business-standard.com/article/pti-stories/ktk-cm-meets-oppn-floor-leaders-on-krishna-river-issue-114010801683_1.html accessed 15 January 2014; and, <http://www.thehindu.com/news/national/karnataka/dont-accept-kwdtii-final-award-rayaraddi-tells-state/article5409019.ece> accessed 15 January 2014.

ensued. These political maneuverings used to be subtle and surreptitious. But in recent times, they are candidly admitted. The BJP leader, Uma Bharati's confirmation of its political nature when the Cauvery dispute escalated in 2012, is just one example.¹²⁸

5.1. The mutually constituent and constructed politics of power and the politics of emancipation

The political and politicized conditions of emergence and mitigation of interstate water disputes is not new or exclusive to contemporary times. In the 1970s, Benjamin (1971) speculated about the role of political equations between the center and states party to the outcomes of the Cauvery dispute. Yet these days, the politics are much more brazenly practiced, with the clear goals of appealing to vote banks. Mainstream political parties increasingly use interstate water disputes as avenues for political mobilization. It is no different in recent disputes such as the Mullaperiyar and Bhabli. Political actors publicize their positions aggressively in newspapers and other media platforms. The battles are not restricted to courts; instead, public forums are increasingly preferred. As it will be seen in the Krishna dispute case, these politics have serious and substantive repercussions in the emergence, recurrence, or resolution of interstate water disputes. Yet adequate attention has not been paid to this dimension, though it has been noted as a crucial factor in shaping the disputes (e.g., see Iyer 2004, Janakarajan 2009, Padhiari and Ballabh 2008, Richards and Singh 2002, Swain 1998). In the Ravi-Beas dispute, when Punjab's legislative assembly in 2004 decided to unilaterally annul earlier agreements with Haryana, Iyer (2004: 3435)

¹²⁸<http://www.ndtv.com/article/south/cauvery-issue-is-political-can-be-sorted-out-says-uma-bharti-248840> accessed 15 January 2014.

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.”

In this chapter, I explore the political spaces of the Krishna dispute occurring outside the formal spaces of resolution. The political ecology of interstate water disputes with features of perennial avenues for conflict is closely intertwined with democratic politics. My objective is to understand the nature and processual dynamics of these transboundary politics in shaping not only the outcomes of the disputes, but also the democratization of political spaces. This offers an opportunity to address the absence of serious treatments of politics in political ecology studies (Peet and Watts 1993, 240).

The other facet of this particular political ecology of interstate water disputes is its multiscale political mobilization, partly enabled by the particular historical and structural conditions discussed in Chapter 4. Further, inequities at a local level - both spatial and temporal - trigger political mobilization across scales. For addressing these, sometimes resolution involves either the fragmentation or convergence of identities or boundaries defined by them.. The goal of this chapter is to discuss the practices and strategies of such political mobilization in the Krishna dispute, and showcase the processes of nonstate actors’ participation in an otherwise statist project of transboundary water sharing. This is evident from the anecdotes I presented earlier in this chapter, but the idea is to locate the radicalization of democratic spaces through the kind of decentering of state that these politics suggest (Barnett and Low 2004).

I discuss these politics in two mutually constitutive categories, expanding the scope of interstate water disputes’ political ecology. First, in what I call the *politics of power*, I focus on political configurations - political party affiliations of the governments at the center and

the states; and, power plays – where political actors engage in power politics. I analyze historical recurrences of the Krishna dispute to examine how the contingent power relations between mainstream political forces impact the outcomes of the dispute. This involves both the political parties in power, but also in those of the opposition trying to benefit from appeasing vote banks and political constituencies. I identify the second category as the *politics of emancipation* or the *politics of inclusion* – similar to the politics of Chatterjee's (2004) *political society*, including nonstate actors' struggles for influencing the dispute's outcomes to address their interests. These politics continually intersect, complement, and converge with the former category of politics, leading to many simultaneous practices of decentering the state and processes of reproducing democratic spaces: coalescence and convergence of identities and interests of nonstate actors across scales, alignment of nonstate interest groups with mainstream political parties, movements for contesting or coopting the state for influencing statist spaces, practices of transboundary water sharing, etc. I illustrate these by discussing specific instances of political mobilization around some key issues of contention drawing on secondary sources, field observations, and key informant interviews in the transboundary spaces of the Krishna in AP and Karnataka generally, but with particular reference to politics in the Krishna's delta, i.e., coastal AP.

My field work during 2011-2013 involved spending several weeks in the Krishna basin districts of AP and along the river's course across the boundary between Karnataka and AP. During the rest of the period, I was based mostly in Delhi interacting with policy makers, technocrats, lawyers, jurists involved with interstate water disputes generally, and the Krishna dispute in particular. This also included attending the KWDT-II hearings. I also travelled frequently to Hyderabad and Bangalore to interact with relevant state and nonstate actors involved in the Krishna dispute. I use these field observations, interactions, and key

informant interviews in tracing the multiscalar political processes of the Krishna dispute, from local to the highest levels of policy spaces.

5.2. The politics of power: Political configurations

The interstate water disputes over the Krishna and other rivers, such as the Godavari, Cauvery, and Narmada, have recurred often since India's independence. The early Nehruvian model's emphasis on irrigation development through Five Year Plans also gave stimulus to competing interests and disputes. For preparing the First Five Year plan, the Planning Commission organized interstate conferences among riparian states to make budget allocations for irrigation development to the states. The interstate conference of 1951 for the riparian states of the Krishna was one such conference, which could be considered a catalytic moment for post-independence disputes over Krishna waters. The following decade witnessed rapid implementation of irrigation projects by the riparian states. The decade also saw the reorganization of state boundaries, which effectively led to consolidation of linguistic-based homogenous geopolitical identities in the states. The states vied for funds from the center and conceived large irrigation development projects, demanding sanctions and resources for these projects.

Over the course of the Krishna river, several projects were proposed. The riparian states were not bound by the limits set by the 1951 interstate conference for reasons discussed Chapter 4. Most individual major state projects, the Nagarjuna Sagar and Srisailem projects in AP, the proposed westward direction of Krishna waters in Maharashtra, and the UKP project in Karnataka, were met with resistance from other riparian states. These were contested and became sources of regular conflicts. The attempts to reconcile the states through center-sponsored mediations did not yield results. The government eventually set up the Krishna-Godavari Commission (Gulhati, Jaini and Hoon 1962) to assess the possible augmentation of

the waters in the rivers. Even the Commission's recommendations were challenged. These issues dominated political debates at the national level and among states. For instance, in a heated debate in the AP assembly in 1963, the state's Minister for Irrigation, A C Subba Reddi accused the Gulhati Commission of biased assessments.¹²⁹ As part of mediation between the states, Prime Minister Nehru urged Maharashtra to explore alternatives for the proposed westward diversion of Krishna waters.¹³⁰ In another instance, Vasantarao Patil, then chief of the Congress party in Maharashtra, accused the center of favoring AP in the Krishna-Godavari dispute.¹³¹ These politics persisted and the mediation efforts by the center failed; the disputes eventually led to setting up the KWDT-I in 1970.¹³²

The history of formal disputes and their resolution processes analyzed in the previous chapter demonstrates the nature of conflicts over Krishna waters. The changing nature of the disputes and interstate relations discussed extends support to the assertion of the perennial presence of conflicts and the politics around it. In the backdrop of their close links with electoral politics, political configurations matter in the emergence, recurrence, and mitigation of interstate water disputes. To substantiate how political configurations matter, I examined the historical preoccupation of the public sphere with the Krishna water dispute post-independence. The power plays in the *politics of power* in the following section substantiate the role and impact of these political configurations further. I took advantage of the availability of *The Times of India* newspaper digital archives to offer a compelling narrative and exhibit these politics.

¹²⁹ "Facts Twisted And Figures Juggled By Gulhati Body: Andhra Minister's Charge in State Assembly." *The Times of India (1838-2004)*, March 15, 1963, 5. Proquest Historical Newspapers.

¹³⁰ "Nehru Not For Diverting Krishna Waters Westward." *The Times of India (1838-2004)*, January 14, 1964, 7. Proquest Historical Newspapers.

¹³¹ "Centre siding with Andhra on water row: MPCC chief." *The Times of India (1838-2004)*, April 27, 1968, 7. Proquest Historical Newspapers.

¹³² It may be worth noting that the center's efforts – the politics of mediations - had helped in other instances. As the Cauvery dispute emerged in the 1960s in its post-Independence manifestation, the mediations produced a mutual agreement between the riparian states. The tribunal had to be constituted much later in 1990.

ProQuest's historical database of *The Times of India* is a fairly well-archived database. I tried several combinations of key words and looked at each record to check how the key word search fared in returning relevant news items. The archives proved to be reliable in generating reasonably relevant returns. A search using a simple key word, "Krishna river water dispute" after independence of India generated 502 records.¹³³ I mapped the number of records against each year and this resulted in the graph presented in Figure 14.

Considering the milestones marked, the graph represents the dispute's trends well. The high and intense activity during the 1960s was prior to the constitution of the KWDT-I, the years during which the center tried to mediate after the three states sought legal adjudication, beginning with Karnataka's formal demand for referring the dispute to a tribunal in 1962. To be sure, note the other key milestone: the intense disputation for allocations in the 1960s which led to the constitution of KWDT-I in 1970. KWDT-I gave its final award in 1976, allowing its review in 2000. The award's expiry and fresh disputes led to constitution of the KWDT-II in 2004, which gave its final award in 2010 and its Further Report in 2014. The dispute is expected to occupy the public space to the extent that these milestones are relevant, that is, during and preceding the constitution of the tribunals. If the dispute occupied space during other periods as well, one can arguably make a case about how interstate water disputes sustain conditions for conflict and remain a permanent source of contentious politics.

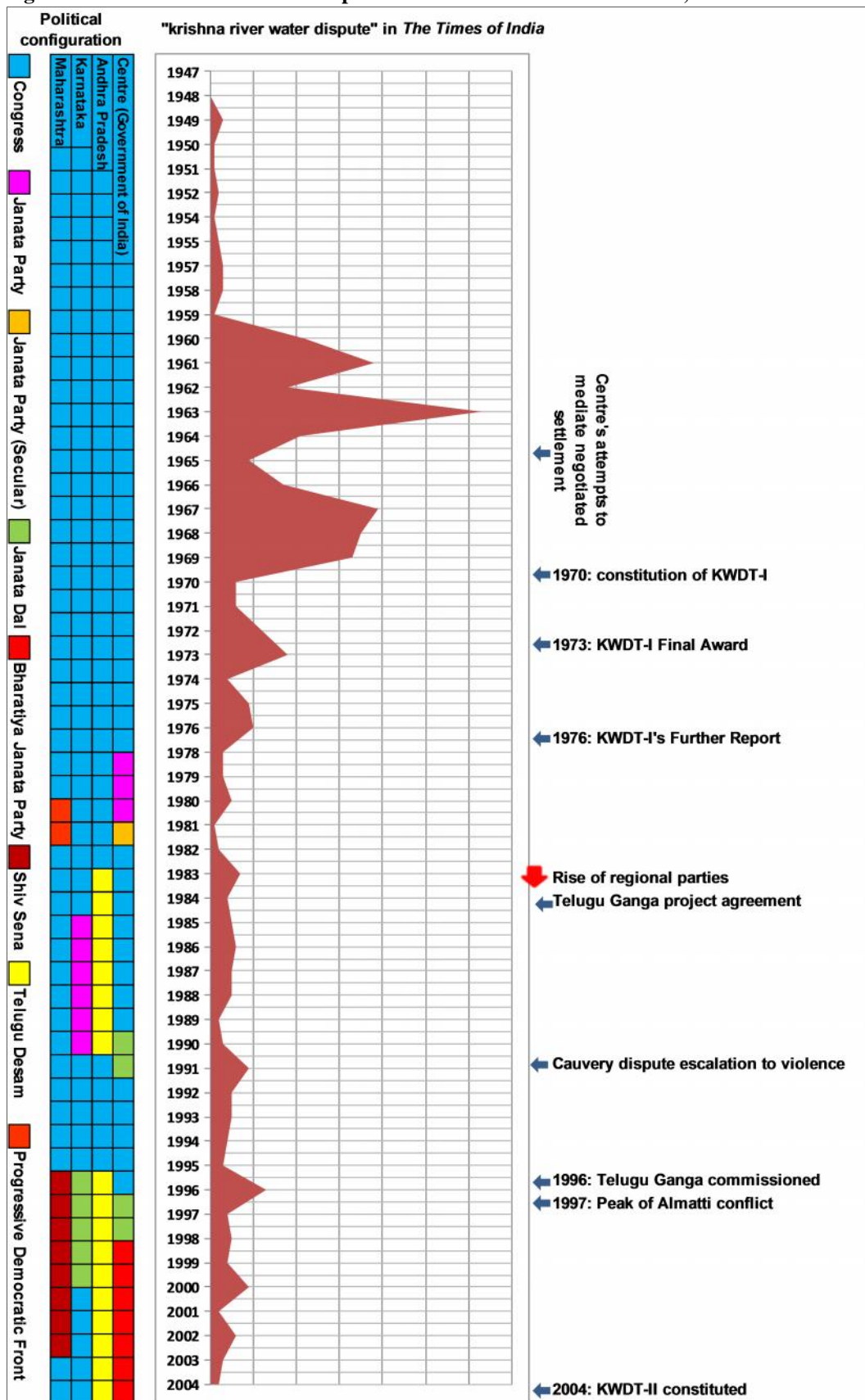
The mapping of occurrence of dispute accompanies a matrix of political configurations. It is a representation of the political party affiliations of the governments in the respective nodes: the center and the three riparian states. This is a fairly accurate representation of party

¹³³ I looked for possible omissions of relevant records and irrelevant inclusions; the search came out satisfactorily with mostly relevant records and almost no inclusions of irrelevant records.

affiliations of successive governments at these nodes, with some minor omissions of short-term interim governments. When this matrix is juxtaposed with the Krishna river water dispute in *The Times of India* archives, it presents a useful historical visualization of the dispute for a narrative of the transboundary politics.

The dispute's occupation of the public sphere is an immediately striking feature of this visual throughout the period. *The Times of India* is a mainstream English newspaper, with its strong base in the Western and Northern parts of India. The archives are also of the Bombay edition, and often local Maharashtra issues were reported on prominently compared to Southern India news. Further, the frequency of coverage of interstate water dispute issues in mainstream English newspapers compared to the vernacular press is much lower. In fact, these issues occupy front page of the vernacular newspapers multiple times more than that in English newspapers. For English newspapers, these issues are often regional news. Yet, the visual shows that the Krishna dispute managed to occupy public debates at national levels throughout the period since independence. The visual also intuitively reflects the narrative of the dispute known so far. The 1950s were the times of enormous focus on irrigation development with the states content in developing projects. It was towards the end of the 1950s, at a point of competing interests, that conflicts emerged between the states. Beginning in the early 1960s, Karnataka demanded formal referral to a tribunal, which led to spikes of activity in the 1960s, prior to setting up the KWDT-I. These were the occasions when the center tried active mediation between the states for negotiated settlements. Other interstate water disputes also emerged in a similar manner, over the Godavari, Narmada, and Cauvery rivers around this time.

Figure 14 : “Krishna river water dispute” in The Times of India archives, 1947-2004



Source: Generated from ProQuest’s The Times of India (1838-2004) historical newspapers digital archives, and other web portal sources such as India.gov.in

This consistent occupation with the dispute remarkably concurs with the known trends of political transformation in India. Indeed, the politics of interstate water disputes can be useful in understanding the making of state and politics in India. This can be illustrated by briefly tracing the trends observable in Figure 14.

After the KWDT-I's final award in 1976, the dispute appears to have tapered off briefly, until the early 1980s. This was the time the state in India began shifting from its known unitary character, with the Congress party largely dominating at the center as well as in the states (Rudolph and Rudolph 1987). During this period, many state governments witnessed the emergence of strong regional powers, especially so in the South Indian states. This emergence of regional powers was conceived as a reconstructive moment of Indian federalism and a sign of its durability, with many regional powers contributing to the emergence of strong coalitional politics at the center (Dasgupta 2001). The government at the center had a very specific history of transformation linked to the Congress party's institutional disintegration prior to this, which led to the brief BJP government of the 1980s (Rudolph and Rudolph 1987, Kohli 1988).

This degeneration of single-party dominance at the national level resonates with the changes in the transboundary political spaces of the Krishna waters. As the matrix of the political configuration shows, the early 1980s saw a change in leadership in two of the three riparian states of the Krishna. Both Karnataka and AP had their first non-Congress government in these states: Ramakrishna Hegde of the Janata party in Karnataka, and N T Ramarao (popularly known as NTR) of the Telugu Desam party (TDP) in AP. Congress-led government continued in Maharashtra. However, another non-Congress leader in the neighboring southern state of Tamil Nadu, M G Ramachandran (popularly known as MGR)

of the AIADMK (All India Anna Dravida Munnetra Kazhagam), led to the emergence of a strong anti-Congress coalition of political forces in the South. This camaraderie, bolstered by their common opposition to the Congress, crafted a 'Southern Council.' This Council, under the leadership of NTR, initiated debates on center-state relations and related constitutional provisions, specifically Articles 256 and 257 (Prasad 1987). This anti-Congress coalition also paved for the (re)emergence of the Telugu Ganga project, which symbolized the Southern states solidarity against Congress and has been a site for vindictive, tenuous, and politicized center-state politics during this period (Prasad 1987, Tummala 1986, Gopal 1989). The project remained at the center of public debates in the 1980s until the government changed at the center. During 1989-1991, the Janata Dal (Prime Minister V.P. Singh) supported by National Front partners followed by the Samajawadi Janata Party (Prime Minister Chandra Sekhar), supported by the Congress formed governments at the center. The Congress party returned to power for another term during 1991-1996. The Southern Council was dismantled as all three riparian states returned Congress governments.¹³⁴

The Congress party lost elections in 1996, paving the way for the United Front, with Janata Dal's Deve Gowda taking over as the Prime Minister. Congress also lost power in the three riparian states to other parties: TDP again in AP, Janata Dal in Karnataka, and the Progressive Democratic Front in Maharashtra. With Deve Gowda, a strong regional leader from Karnataka, at the center, the Krishna dispute was back on the front burner. Karnataka's contestation of the Telugu Ganga project, and AP's protests against increasing the Almatti dam's height, raised the transboundary politics of the Krishna to a new height. Deve Gowda

¹³⁴ In parallel, the Cauvery dispute between Karnataka and Tamil Nadu escalated to the point of setting up a tribunal in 1991. Though AP was not party to it, the already contentious nature of the Telugu Ganga benefitting Tamil Nadu had influence on the transboundary politics between AP and Karnataka.

was seen as maneuvering the Almatti dam issue in favor of Karnataka (Swain 1998).¹³⁵ The Telugu Ganga project became operational in 1997; that same year, Karnataka filed an Original Suit with the Supreme Court contesting the project, and AP filed another Original Suit over the Almatti dam's height. These issues led to a spike for the Krishna dispute in the public sphere. The Janata Dal-led United Front's government fell in 1998, and elections returned the BJP led NDA government at the center.

The KWDT-I Award expired in 2000. The transboundary politics of Krishna waters remained tenuous with the Almatti and Telugu Ganga remaining unresolved. The Supreme Court gave its decisions to the Original Suits, but also recommended a review of the KWDT-I award to resolve outstanding issues. Maharashtra also added to the accumulating contentious issues by joining the dispute. Maharashtra demanded review of the KWDT-I award and a share in the surplus waters. This eventually led to formation of the KWDT-II in 2004.

This narrative of Krishna's transboundary water politics vis-à-vis state-making in India is certainly very broad, and misses more nuanced understanding of the actual politics. Yet it corroborates the public sphere's occupation with the Krishna dispute as reflected in the *Times of India* newspaper archives. My intent is not to argue that the outcomes of the Krishna dispute or interstate water disputes in general are shaped unilaterally by political configurations, nor vice-versa, that interstate water disputes are driving the political transformation and federal relations in India. The idea is to utilize reasonable evidence to propose an alternative explanation to the outcomes of interstate water disputes, for both their emergence and recurrence. As has been seen in Chapter 4, many other factors contribute to

¹³⁵ After Deve Gowda's government fell in March 1997, Chandrababu Naidu, then AP Chief Minister and strong stakeholder in the United Front, chose to support I K Gujral over Tamil Nadu's G K Moopanar apparently to avoid similar bases in southern interstate water disputes (Rubinoff 1997).

the emergence and recurrence of interstate water disputes. But political configurations in the politics of power, as I distinguished, are one of the key determinants of their outcomes and in return shape center-state and state-state relations.

5.3. The politics of power: Parties and power plays

Under these politics of power, I examine the active roles of the constituents of political configurations in enabling the power plays and their shaping of the outcomes of interstate water disputes. The macropolitics defined by center-state and state-state politics is a manifestation of active and deliberate engagement in power plays by political actors. I discuss these power plays using two specific instances within the Krishna dispute, where AP and Karnataka engaged in power plays in pursuing their respective interests around two projects: one, the Telugu Ganga project in AP, and the other, the Almatti dam project in Karnataka.

5.3.1. The Telugu Ganga Project

The Telugu Ganga project is often celebrated as an instance of interstate water sharing cooperation, exemplifying the spirit of federalism (see e.g., Sampathkumar 2005). But a deeper view shows how the opportunistic politics of power plays and expediencies made this project possible. Nonetheless, the project is indeed a unique and extraordinary case of interstate cooperation and the inter-basin transfer of water. Paradoxically, the same politics that made this extraordinary project possible are also the reason for the conflicts to persist, and to be the reason for its sub-optimal outcomes. Though the entire infrastructure is in place, conflict with irrigation interests upstream prevents full realization of the 15 TMC (Thousand Million Cubic Feet) due for Chennai city (Ramadevi and Nikku 2008). I trace this history of the politics of the Telugu Ganga below.

‘Telugu Ganga’ was a name given by NTR; ‘Telugu’ was an omnipresent prefix to all development schemes and projects during his regime. This was his way of asserting the identity of the Telugu speaking people of AP. NTR rode to power in 1983, rallying on the ideas of Telugu identity and self-respect, just nine months after floating the TDP.¹³⁶ NTR deployed the idea of Telugu nationalism successfully using a range of symbols and idioms to reject The Congress party’s authoritarian and autocratic ways in governing the state (Kohli 1988). The Telugu Ganga was an opportunity to antagonize the Congress party regime at the center. The idea of diverting Krishna waters to provide for Chennai’s water requirements was revived as a means of fortifying the ‘Southern Council’ against the central government’s dominance in the states.

The idea of diverting Krishna waters for Chennai goes back to the time of British rule. In 1881, Colonel Ely, the Chief Engineer of the Madras presidency, conceived the idea of linking the Krishna and Pennar basins through a canal to irrigate South Arcot parts of the presidency and also provide drinking water for Madras city (now renamed Chennai).¹³⁷ The idea was revived after independence by the Madras Metropolitan Development Authority in its plans for providing water supply to Madras. In 1951, a proposal was made and it was later discussed in the Parliament in 1963; in the Lok Sabha (the lower house of the Parliament), the Minister for Irrigation assured sympathetic consideration for the proposal.¹³⁸ The

¹³⁶ This was also sought to address other tenuous identity politics within southern states, especially between Tamil Nadu and AP. AP was carved out of larger Madras state after independence, which initiated the linguistic identity-based states reorganization. This history also played a role in NTR’s assertion of Telugu identity and idioms of self-respect. For a useful discussion of political cultures in South India, see Seshadri (1988). Jayalalitha from AIADMK of Tamil Nadu, now the Chief Minister of the state, insisted on calling the project, the “Dravida Ganga Project.”

¹³⁷ Prasada Rao, “Krishna Pact Augurs Well.” *The Times of India (1838-2004)*, May 2, 1983, 9. Proquest Historical Newspapers.

¹³⁸ “The Krishna water supply project for Madras,” a note drawing on a souvenir released in 1983, found at <http://basemaps.in/pdf/TGP.pdf>, accessed 31 March 2014.

KWDT-I did not make any allocations to Madras, for Tamil Nadu was not a riparian state. But in 1976, while the KWDT-I was still functioning, then-Prime Minister Indira Gandhi obtained the concurrence of the three riparian states to contribute 5 TMC each from their respectively allocated shares. An agreement was signed to this effect in Madras on 14 April 1976, which became part of KWDT-I's award.

This was celebrated as an example of interstate cooperation in the spirit of federalism. But a closer look reveals an interesting story about how politics drive these otherwise enticing and positive collaborative gestures. It is ironic that this celebrated instance occurred in perhaps the darkest periods of independent India's history, the Emergency period of 1975-1977.

Prime Minister Indira Gandhi declared an emergency to contain dissidence in many parts of the country. This also included dismissal of the government of DMK (Dravida Munnetra Kazhagam party) in Tamil Nadu. As a gesture to appease Tamil people after the dismissal, the Prime Minister Indira Gandhi traveled to Madras to announce this interstate sharing agreement at a big public meeting on 15 February 1976. She declared that she had obtained the concurrence of all the Chief Ministers of the riparian states by phone.¹³⁹ The conditions and contingent considerations clearly suggest a stealthy political maneuvering by Mrs Gandhi to put this agreement in place. After all, drawing water from the shares of the three riparian states for a city of a non-riparian state was not a simple matter, particularly while the riparian states were involved in a dispute being adjudicated by a tribunal, the KWDT-I.

Notwithstanding, a formal agreement to this effect was signed on 14 April 1976. Congress was in power in all the three state governments at this point (Figure 14 above). On behalf of

¹³⁹ Prasada Rao, *op. cit.*

Tamil Nadu, in the absence of an elected government, the then Governor K K Shah signed the agreement (CWC 1995, 322).

Without these peculiar political circumstances, would such an agreement be possible? This question is worth posing in the context of the argument pursued here. At least two related inferences can be drawn. First, there is no doubt that the constellation of powers inscribed by political configurations at that juncture led to this agreement. Second, the power relations ingrained in this agreement eventually reproduced completely different kind of asymmetries and uneven conditions between the riparian states, which later became the crux of the contentious issues placed before the KWDT-II between AP and the two upstream states over using surplus waters. I trace below the trajectory of how this agreement transformed into an entirely different conflict.

The project to divert Krishna waters to Tamil Nadu for Madras's water requirements and irrigation was a reasonable project in 1951, but not after the states reorganization in 1956, when Tamil Nadu became a non-riparian state. Tamil Nadu's demand for diversion in 1963 was only for Madras's water requirements. The KWDT-I was constituted in 1969 and there was no possibility that it could make allocations to Tamil Nadu, as a non-riparian state could not be a party to the dispute. There was no hope that the project could be realized until politics enabled an avenue for Prime Minister Indira Gandhi to move proactively to make the project happen. After the Emergency period, the Janata party-led government formed the center and the AIADMK (a splinter of DMK), which came to power in Tamil Nadu, pursued the Telugu Ganga project with the center. The Janata party facilitated another agreement on 28 October 1977 with all the states involved, including Tamil Nadu. In this agreement, some arrangements were detailed. Salient features include: (a) the water would be diverted from the Srisailem project through an open channel; (b) AP state would cooperate in land acquisition

for the project; (iii) Tamil Nadu would bear all the costs of transmission from Srisailem to Poondi in Tamil Nadu, including the construction of the canal; and (iv), further details could be worked out bilaterally by AP and Tamil Nadu (CWC 1995, 323).

There was little progress after that, even though Indira Gandhi returned to power in 1980. Moreover, Karnataka began backtracking from the agreement, even though AP and Maharashtra were willing to proceed.¹⁴⁰ This was more than likely due to the soured relations between Karnataka and Tamil Nadu over the Cauvery waters. But when NTR formed the first ever non-Congress government in AP in 1983, the project received an impetus. NTR's primary electoral plank was his critical stand against the autocratic ways of the Congress (Kohli 1988). NTR's anti-Congress stance tested center-state relations (Gopal 1989, Tummala 1986). NTR aggressively campaigned for and pursued change in the status quo of center-state relations and called for stronger states (Prasad 1987). NTR's call came during a critical transition period for Indian politics: the degeneration of the Congress party's single-party dominance and a shift of power to regional parties (Rudolph and Rudolph 1987).

A simultaneous rise of anti-Congress governments in other Southern states provided an opportunity for NTR to find solidarity with these forces and put together a 'Southern Council.' NTR pursued this national-level anti-Congress front vigorously. He saw a major opportunity for strengthening Southern solidarity through the Telugu Ganga project. After the Emergency, the AIADMK government in Tamil Nadu was led by MGR. MGR was a former leader of DMK and a Tamil film star who rose to power after splitting from DMK (Forrester 1976). MGR and NTR belong to the same category of cinematic idols who rose to power, and

¹⁴⁰ "Current Topics: Sharing River Waters." *The Times of India (1838-2004)*, October 28, 1982, 8. Proquest Historical Newspapers.

shared a bond that helped with political configurations, and particularly so with the Telugu Ganga project.

Soon after NTR took over as the Chief Minister, he initiated discussions over the Telugu Ganga project. Sworn in as Chief Minister of the state on 9 January 1983, within a couple of days - reported on the 12 January - his Minister for Irrigation, Srinivasulu Reddy announced that the Telugu Ganga project would be discussed in the cabinet meeting.¹⁴¹ The non-Congress government headed by Ramakrishna Hegde of Janata Party in Karnataka also worked in favor of the project.¹⁴² The AIADMK government in Tamil Nadu was very keen to have the project implemented. That particular year also saw one of the worst droughts ever recorded in Tamil Nadu, to the extent that evacuating Madras was being considered.¹⁴³ Water from the Krishna and Godavari rivers was being transported by trains from AP to supplement water-parched Madras.¹⁴⁴ Other proposals such as laying a pipeline along the railway network to transport water to the city were also considered.¹⁴⁵ Finally an agreement for the Telugu Ganga project - to draw the 15 TMC of Krishna waters for Madras - was signed between AP and Tamil Nadu on 18 April 1983, with NTR and MGR as signatories (CWC 1995, 331-6).

¹⁴¹ "AP cabinet to discuss Krishna water for TN." *The Times of India (1838-2004)*, January 12, 1983, 9. Proquest Historical Newspapers.

¹⁴² Maharashtra was also eager to settle a long-running border dispute with Karnataka along the sidelines of cooperating with the Telugu Ganga project. See "Vasantrao hopes to settle border dispute." *The Times of India (1838-2004)*, May 25, 1983, 1. Proquest Historical Newspapers.

¹⁴³ "Waterless and desperate." *The Times of India (1838-2004)*, March 19, 1983, 8. Proquest Historical Newspapers.

¹⁴⁴ "Water trains can't slake Madras." *The Times of India (1838-2004)*, April 12, 1983, 1. Proquest Historical Newspapers.

¹⁴⁵ "SR to lay water pipeline." *The Times of India (1838-2004)*, April 10, 1983, 1. Proquest Historical Newspapers.

This is one layer of political narrative concerning the Telugu Ganga. Prime Minister Gandhi took advantage of a particular political juncture to make it happen. It is a paradoxical turn of events where the same project became the political means for consolidating a political consensus antagonistic to Mrs Gandhi's Congress. Indira Gandhi later accused the Southern non-Congress governments of practicing populism, pointing at NTR's own welfare schemes and subsidies and his simultaneous accusations about Congress' biased approach in releasing funds from the center.¹⁴⁶ These political antagonisms continued, and when the Congress party returned to power after the Janata party, NTR accused the center of vengeful tactics in not providing necessary clearances for the Telugu Ganga project to proceed.

The other layer of narrative concerns how NTR pursued more than one strategic benefit in taking up the cause of the Telugu Ganga. Besides the alignment of Southern state political forces, he also wanted to use the Telugu Ganga project to AP's advantage. He ensured including an irrigation component in the project to benefit the drought prone districts of Rayalaseema (Sampathkumar 2005). As a follow up to the 28 October 1977 agreement in which Tamil Nadu and the three riparian states were parties, AP's and Tamil Nadu's 1983 agreement in for implementing the Telugu Ganga project added complexities to the dispute in many ways. While the project required the concurrence of other riparian states for operationalizing it, implementation needed the strategic cooperation of AP with Tamil Nadu. Krishna water had to be diverted from AP to reach Chennai, for economic and technical reasons. This was an important consideration for Tamil Nadu's leadership in toeing the line of NTR and participating in the Southern Council. Concomitantly, however, Tamil Nadu was

146 "Indira hits out at populist policy in South." *The Times of India* (1838-2004), May 26, 1983, 1. Proquest Historical Newspapers.

also dependent on the center's financial support for the project. MGR had to balance these interests.

The inclusion of the irrigation component changed the scope and shape of the project from its original conception to transport 15 TMC of Krishna waters for Madras's water supply. In fact, it revived Colonel Ely's original idea to link the Krishna and Pennar basins not only for Madras's drinking water but also for irrigation in the en route drought-prone areas in the South. Colonel Ely's plans included irrigation benefits to South Arcot areas (nowadays, drought-prone parts of AP and Tamil Nadu). However, NTR's plans restricted irrigation benefits to only those areas in AP. AP took the advantage of the provision of the 28 October 1977 agreement allowing AP and Tamil Nadu to work out the details of diversion and transport bilaterally. AP combined meeting the irrigation needs of its Rayalaseema districts to expand the scope of the project. Thus, AP shifted the off-take point for Madras' water supply channel by about 175 km from the Srisailem project, to Chennamukkapalli in Cuddapah district. Until this take-off point, the channel would have a capacity of 11,500 cusecs to carry a total of 29 TMC, including the irrigation component. This replaced a 1500 cusecs capacity channel for carrying the original 15 TMC for Chennai. AP and Tamil Nadu agreed on modified cost-sharing arrangements for implementing this changed plan (CWC 1995, 331-6).

This enlargement in scope and size of the project would not have been an issue of concern for the upstream states; the concerns arise in the background of KWDT-I's allocation of surplus waters for AP's use, though without any claim for rights later. Karnataka developed apprehensions with the Telugu Ganga project on the grounds that AP was ostensibly creating permanent facilities for using surplus waters and, eventually, it might claim prior rights for these proportions. Though the project began during NTR's regime in 1983, its implementation took time and was completed only in 1996. Karnataka filed the Original Suit

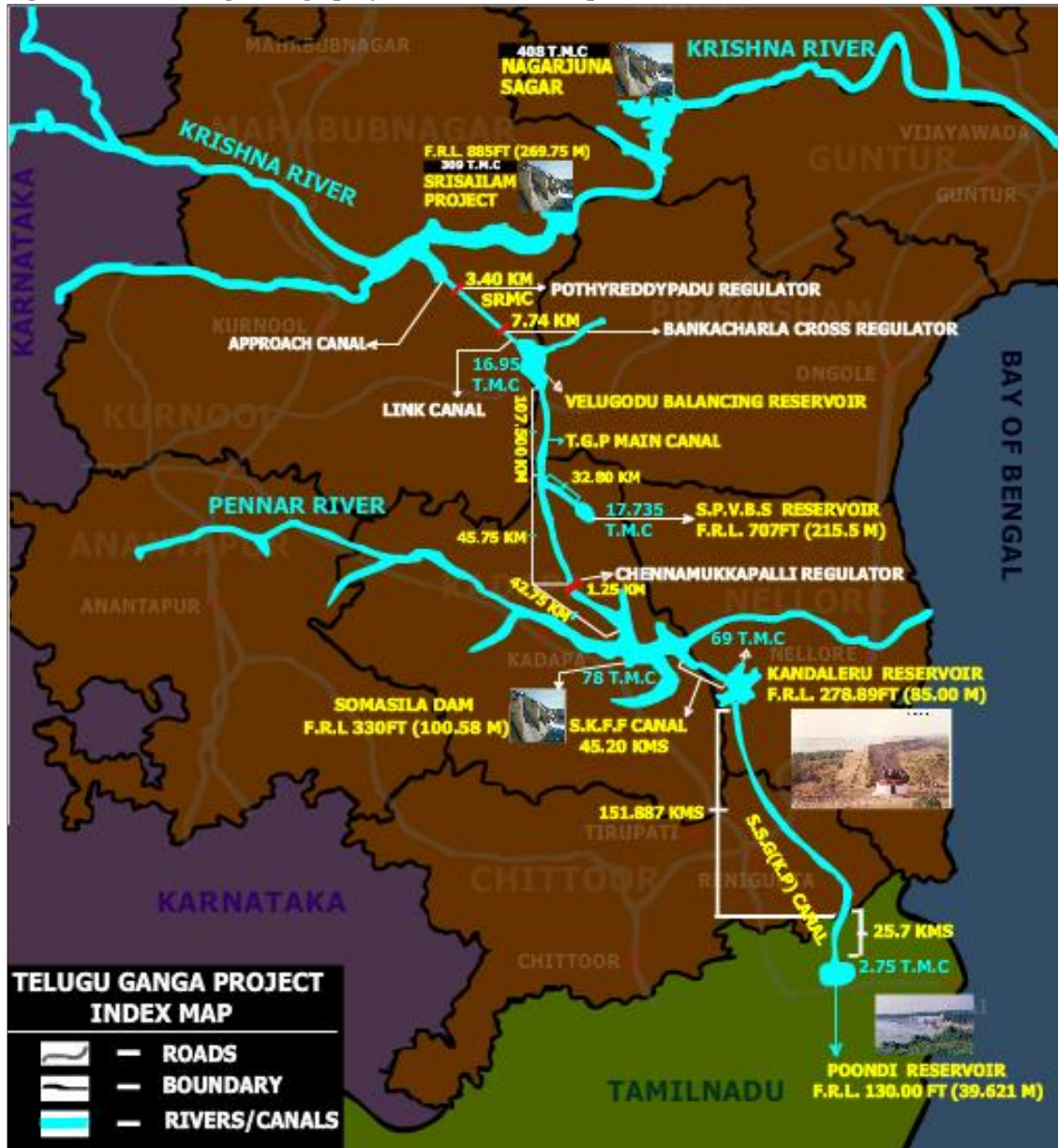
No. 1 of 1997 (discussed in the previous chapter) before the Supreme Court precisely because of its apprehensions arising from the Telugu Ganga project. In the Suit, Karnataka sought directions to implement Scheme B (implementation mechanisms of the award) so as to prevent AP creating permanent facilities and claiming rights on the use of surplus waters. Maharashtra joined with Karnataka in bringing this issue before the subsequent KWDT-II.

Karnataka alleged that AP was constructing permanent facilities to use water in excess of the allocated 2060 TMC (surplus waters and 'remaining waters'), the Telugu Ganga project being one of the projects with this goal. It demanded that the Supreme Court restrict AP from using surplus waters through implementation of Scheme B. The Supreme Court gave its directions, of which two sets of orders are relevant here. One, the Court observed that it could not give directions for implementing Scheme B because (a) it did not form part of the KWDT-I's final order, and (b) Scheme B did not have the consensus of the party states. Two, the Court felt that AP could not be restricted because (a) the Tribunal award did not specify the manner in which AP could use the surplus waters (though without any right), and (b) it was the central government's discretion to sanction projects of the downstream state, while avoiding the apprehensions in the upper riparian states. In this suit, Maharashtra was a rather reluctant participant and asked the question whether it was not premature for Karnataka to approach the Court at that point when the award was due for review in 2000. The Court eventually agreed and suggested that the central government should consider constituting a tribunal for reviewing the KWDT-I's order, while also addressing the accumulated grievances of the states.

Figure 15 shows the overall plan for the Telugu Ganga project. This final plan involves an irrigation canal network and multiple reservoirs on the way to Chennamukkapalli, providing irrigation for about 275,000 acres in Rayalaseema districts of AP. At Chennamukkapalli, a

regulator discharges 1500 cusecs into an off-take canal to carry water further downstream. This canal meets the Pennar's reservoir and canal system, including the Somasila and Kandaleru reservoirs. The Kandaleru reservoir has a capacity of 54 TMC, out of which 5 TMC of storage is allocated for the 15 TMC of Krishna water meant for Chennai.

Figure 15 : The Telugu Ganga project – a schematic representation



Source: <http://basemaps.in/> accessed last 31 March 2014.

When Karnataka brought this up before the KWDT-II, Maharashtra also joined the protests against AP's implementation of the Telugu Ganga project. KWDT-II set out to probe the core

of the issue, i.e., whether AP had been misusing the October 28, 1977 agreement to use surplus waters. The tribunal determined that the agreement between the three states was not unconditional. The relevant clause in the agreement stated that the three states would discuss the location and the manner in which the transfer to Madras city would take place. The Chief Minister of AP's agreement to the 14 April 1976 agreement through a letter dated 17 April 1976, had a reservation – that the location and the manner of transfer should be left to the state from which the diversion would take place, and Tamil Nadu state. Too, the subsequent agreement of 28 October 1977 had AP explicitly putting its objections on record. AP also added that the arrangement should not affect its utilization plans that included irrigation and other consumptive uses. The letter dated 6 December 1977 from the Chief Minister of AP said,

... subject specifically to the condition that the terms of the agreement are confined only to the scheme of conveying 15 T.M.C. of water to Madras City with restrictions as to user applicable only between the agreed off-take point of the lined channel up to Somasila and that they do not in anyway affect the rights of the State of AP to utilize the waters of Krishna river for purposes of irrigation and other consumptive uses in any area and in any manner in conformity with the decision of the Krishna Water Disputes Tribunal. (CWC 1995, 326)

AP appears to have had plans to include an irrigation component in the Telugu Ganga project right from the idea's revival by Prime Minister Gandhi. In giving it a major push and pursuing it aggressively, NTR had multiple objectives, including his own political interests. NTR contested elections and won, first from Tirupati in Chittoor district, and later from Hindupur in Anantapur districts - both in the Rayalaseema region, the beneficiary of the Telugu Ganga project's irrigation component. Unarguably, the Telugu Ganga project catered to NTR's constituencies' interests. The project remained a source of political sparring between the center and AP throughout his regime, 1984-1989, in the background of the

national politics discussed earlier. The inclusion of the irrigation component required additional clearances from central agencies such as the CWC, and the project got delayed. The NTR-led AP government accused the Congress-led center of dilatory tactics and vindictive approaches in clearing the project (Gopal 1989).

The Telugu Ganga was completed much later in 1996, after a couple of regime changes in AP. TDP was in power at that time, but with NTR's successor, N Chandrababu Naidu, as the Chief Minister. Since the project's launch in 1983 until it was completed in 1996, the political regimes changed in Karnataka and at the center too. Ramakrishna Hegde's government in Karnataka, though it was in solidarity with TDP in the Southern Council, eventually developed differences with NTR's government over the Telugu Ganga (Tummala 1986). At the center, the Congress party was briefly replaced by the National Front government before Congress party returned to power in 1991. Later in 1996, the Janata Dal-led United Front government took over, with TDP as its ally under the leadership of N Chandrababu Naidu. Karnataka's H D Deve Gowda became the Prime Minister from the United Front. Under Deve Gowda's government, the Krishna dispute shifted from the Telugu Ganga project to Almatti dam, the other case about power plays in the Krishna dispute.

5.3.2. The Almatti dam conflict

The Almatti dam carried the baton from the Telugu Ganga project and continued the trend of transboundary political contestations between AP and Karnataka over Krishna waters. AP, in its retort suit, the Original Suit No. 2 of 1997, brought up Karnataka's increase of the Almatti dam's height as an issue before the Supreme Court. In this case, the politics around the Almatti became a source of bitter conflict, particularly between the states of Karnataka and AP, with political actors often resorting to public grandstanding and playing to their

respective political constituencies. Before discussing the specifics, a brief historical background of the Almatti dam project provides a useful context.

The Almatti dam was part of the Upper Krishna Project (UKP), conceived to provide for the drought- and famine-prone districts of Bijapur, Bagalkot, Gulbarga, and Raichur. The UKP originated in the plans of the former princely state of Hyderabad, which had dams at Narayanpur and Almatti as part of the UKP (then in Hyderabad state, now in Karnataka) as well as at Nagarjunasagar feeding the Lower Krishna Project (then in Hyderabad state, now in AP). The UKP as planned at that time did not take off as it involved submergence in Bijapur district, then part of the Bombay presidency. But after the states reorganization in 1956, all the districts of Bijapur, Gulbarga, Raichur, and Bagalkot became part of the Mysore state, and the state took up implementing UKP in 1960, with Almatti's FRL (Full Reservoir Level) at RL 524.256 m.¹⁴⁷ In its final version, the UKP had the twin dams of Almatti and Narayanpur serving complementary roles in catering to 2.084 million acres of command area, and with utilization capacity expandable up to 442 TMC (KWDT-II 2010, 603). Almatti dam was meant to impound the bulk of the storage and also generate electricity, while Narayanpur dam was for diversion purposes. In 1964, GoI sanctioned the UKP Stage I (UKP-I), under which the Narayanpur dam was constructed. Following the GoI's suggestion, the location of the dam was shifted to Sidhpur, 5-6 km upstream, to reduce the length of the dam by 1 km and thereby lower costs. To make up for the losses in storage of the Narayanpur dam due to the shift, it was suggested that the Almatti dam's height could be increased at minimal cost. Thus, the Almatti dam's height was approved at RL 512 m (including the gates) under UKP-I. This was revised later, and received sanctions from Planning Commission: its final

¹⁴⁷ RL (Reduced Level) is the standard notation of height above a datum, here the MSL (Mean Sea Level).

approval in 1986 with spillway crest level at RL 523.8 m and power dam level at RL 528.5 m. Under UKP Stage II (UKP-II), the dam's height was proposed to be increased to an FRL at RL 524.256 m, which eventually was taken up under UKP Stage III (UKP-III) for utilizing a total of 173 TMC of Krishna waters. The Supreme Court, in its decision on the two Original Suits between Karnataka and AP, allowed Almatti's FRL level up to RL 519.6 m on the grounds that the allocations of the tribunal (KWDT-I) was not project-wise but en-bloc and Karnataka was free to have additional storage capacity as long as it did not divert waters in excess of its allocated share.¹⁴⁸

When KWDT-II took it up, the Almatti dam was operating at RL 519.6 m.¹⁴⁹ Both Maharashtra and AP objected to this height. Maharashtra alleged that the dam's height could not be increased above RL 518 m, for doing so would increase submergence and choke river channels in its territory. This had been a grievance for Maharashtra since the late 1980s (KWDT-II 2010, 128). After the Supreme Court's verdict, Maharashtra requested the CWC not to clear Almatti's height beyond 512 m to avoid submergence in Maharashtra territory. Yet Karnataka increased the height to RL 519.6 m, Maharashtra alleged, making its territories vulnerable to submergence. On the other hand, AP argued that UKP was unauthorized and Karnataka was storing beyond its entitlement of 160 TMC from the Almatti dam. It alleged that Karnataka increased the height with an intention to utilize up to 442 TMC, thus cutting into surplus waters. AP claimed this would increase its risks as the lower riparian state. AP also alleged that Karnataka was going ahead with increasing the height without other due clearances such as dam break analysis and environmental impact assessments. KWDT-II

¹⁴⁸ Decision of the Supreme Court dated 25 April 2000 in the Original Suit No. 1 of 1997 (State of Karnataka vs. State of AP and others).

¹⁴⁹ Karnataka by that time had already increased the FRL to 524.256 m by installing radial gates. This was cut to FRL 519.6m, after CWC's TAC asked it to do so in 2000 (KWDT-II 2010, 607).

determined that Maharashtra's apprehensions of submergence and sedimentation were unfounded; Almatti dam even at its height at RL 524.256 m would not cause substantial injury to its interests. The tribunal also found that the dam at FRL 519.6m had not affected inflows into AP, and the FRL of RL 524.256 m would cause no injury to AP's interests either. KWDT-II eventually allowed Almatti's FRL to rise to 524.256 m. Yet, the tribunal considered the apprehensions of AP about likely losses due to delays caused by the Almatti's increased height. The *kharif* crop (monsoon crop) immediately downstream of the dam (and ahead of the carryover structures of Srisailem and Nagarjuna Sagar) in AP, under the command area of Jurala project, needed protection from any such delays. The tribunal estimated the requirement at 8-10 TMC during June-July, and asked Karnataka to ensure these time-bound releases accordingly (KWDT-II 2010, 661).

That it is hereby [*sic*] directed, as provided in the discussion held while dealing with Issue No. 14, that the State of Karnataka shall release 8 to 10 TMC of water to the State of AP from Almatti Reservoir in the months of June and July, as regulated releases. (Clause XIII of the final award, KWDT II 2010, 808-809)

KWDT-II's final award came recently and has not been tested yet by a distress year. This is likely to be much more complicated with the formation of the newest state, Telangana, as of June 2, 2014. The Jurala project is in Telangana, while the two other carryover storages are located in truncated AP state. The state of AP has already filed an SLP with the Supreme Court challenging the final award, with the Almatti dam height as one of the main complaints. Another SLP has been filed by a farmer leader, Devineni Uma Maheswara Rao,

an MLA (Member of Legislative Assembly) of the TDP (in opposition when he filed the SLP) along with seven other MLAs against KWDT-II's Almatti decision.¹⁵⁰

This history of the Almatti dam conflict puts the following discussion of power play politics in perspective. The Almatti dispute defined the Krishna's transboundary relations between AP and Karnataka over the past few years. The dispute strained relations between the two states with Prime Minister Deve Gowda (from Karnataka) accused of having favored his home state over AP's interests (Rubinoff 1997). The bitterness generated by this issue remained a major cause of rancor for AP.

The accusations of unfair political maneuvering carried weight, particularly in the vernacular press in the states. The bitterness precipitated to higher levels of policy making as well, and is palpable even in the KWDT-II proceedings. The technocrats and government functionaries from AP, in spite of outwardly cordial relations with their counterparts from other states, could not suppress their deep sense of discontent over the issue whenever the interactions veered to consider the Almatti. I was witness to quite a few of these awkward moments. A key official from Karnataka, preferring not to be identified, used to retort with frustration about how AP is "obsessed with Almatti," and "blinded by it;" even though there were other credible reasons for them to be unhappy.¹⁵¹ The following discussion uncovers the layers of politics that contributed to this bitterness.

The Almatti dam conflict occurred at an important juncture of India's federal political history and state-making. The elections of 1996 ended the long run of single-party dominance since

¹⁵⁰ <http://kannadigaworld.com/news/karnataka/58207.html> accessed 31 March 2014.

¹⁵¹ This respondent was making reference to the final formula to share the 65% dependability and surplus components given by the KWDT-II, which in his opinion hurts AP's interests more than the Almatti.

India's independence (Rudolph and Rudolph 2002, Singh 2001).¹⁵² India until 1996 had been ruled by the Congress party, with a brief rule by the Janata party and Janata Dal-led National Front in the late 1970s and the late 1980s respectively. We can consider, therefore, that the era of coalitional politics began in the late 1980s, but in the early 1990s, after Rajiv Gandhi's assassination, the Congress party government has had full majority for a term. However after the 1996 elections, the coalitional politics has become the defining character of the Indian state and government.¹⁵³ The dispute over the Almatti dam tested this trend.

In the early 1990s, the Congress party was in power in Karnataka and also at the center. Deve Gowda in the opposition pursued the UKP and the Almatti dam issue aggressively. He accused then Chief Minister Veerappa Moily of willful delays and demanded the urgent completion of the project with the dam's height at RL 524.256 m.¹⁵⁴ This was at the time when Karnataka assembly elections were due, in 1994. Deve Gowda became the Chief Minister after the elections, and by 1996, his government was under pressure for delays in the project's completion. The project involved the resettlement of 85 villages with a population of over 200,000, which added troubles to the government.¹⁵⁵ Meanwhile, AP was resisting the increase in height and the state was exploring legal options to challenge it.

¹⁵² Mehta (1997) described this political landscape in India at that time aptly as "fragmentation amid consensus," referring to fragmented federal polity, but with an ideological consensus. The general elections of 2014 appears to have changed this course, ending the coalitional governments and giving massive and decisive victory to the BJP (Bharatiya Janata Party).

¹⁵³ Until recently; the year 2014 elections returned a single-party majority government, with the BJP forming the government at the center.

¹⁵⁴ "Moily assailed for project delay." *The Times of India (1838-2004)*, August 1, 1994, 4. ProQuest Historical Newspapers.

¹⁵⁵ "Delay in Krishna project affects villagers adversely." *The Times of India (1838-2004)*, March 18, 1996, 9. ProQuest Historical Newspapers.

The parliamentary elections of June 1996 catapulted Deve Gowda to the Prime Minister position.¹⁵⁶ He became the Prime Minister of the United Front, a 13 party coalition government, with the Congress party extending support from outside. The TDP's N Chandrababu Naidu was the convener of the United Front. The main opposition party in AP, Congress began mobilizing support against the increase in the Almatti dam's height, putting pressure on TDP in power. Deve Gowda, who supported the dam vehemently earlier on behalf of Karnataka, had to mediate between the two states for an amicable solution.¹⁵⁷ By August, the pressure built to a point that Chandrababu Naidu's TDP government in AP warned it might withdraw its support from the United Front government. Chandrababu Naidu accused Deve Gowda of favoring Karnataka over AP, by allocating the central government's special assistance funds to the UKP, about INR 2 billion to Karnataka as against a mere INR 0.22 billion to AP. AP was also unhappy about the partisan manner in which the Prime Minister conducted business, without involving AP in decision making about resolving the Almatti issue.¹⁵⁸ The UF government's future was in danger. The two Chief Ministers, Chandrababu Naidu of AP and J H Patel of Karnataka, accused each other of politicizing the issue and engaging in grand posturing in public forums.¹⁵⁹ The situation was evolving day by day. On 11 August 1996, the TDP warned of withdrawing support, putting the UF government on the verge of collapse. By the end of the day, after busy parleys and conferences that went through the night, the UF government was able to defer a negative decision by setting up a Chief Ministers' (CM) panel to resolve the issue. The panel included

¹⁵⁶ For an interesting discussion of Deve Gowda's rise in the complex political terrain of Karnataka and then to national politics via astute management of coalitional political forces, see Manor (1996).

¹⁵⁷ "Gowda caught between the devil and deep sea." *The Times of India (1838-2004)*, July 7, 1996, 7. ProQuest Historical Newspapers.

¹⁵⁸ "Gowda has a tough task on Almatti." *The Times of India (1838-2004)*, August 11, 1996, 7. ProQuest Historical Newspapers.

¹⁵⁹ "UF sets up CMs' panel to resolve dam crisis." *The Times of India (1838-2004)*, August 12, 1996, 1. ProQuest Historical Newspapers.

four non-riparian state Chief Ministers – West Bengal, Tamil Nadu, Assam, and Bihar – all allies of the Front. The CM panel in turn appointed a nine-member technical committee to probe the matter. Neither the CM panel or the technical committee had any precedence, nor were they legitimate under the constitution or law. The panel was just a temporary political strategy for reconciling the two warring Chief Ministers. Deve Gowda needed such neutral non-partisan, high profile means to counter and assuage Naidu, doing double duty as a way to address public perception about his partisan behavior. Some political commentators interpreted this creation of the CM panel as an indicator of the growing weakness at the center in Indian polity.¹⁶⁰ Indeed, it challenged the political authority of the Prime Minister and the center. Deve Gowda had to take refuge behind a CM panel to address the “conflict of interest.” As Narendra Pani noted, for the CM panel with all the CM members from the UF party states, the priority was to save the UF government rather than finding a fair and enduring solution.¹⁶¹

There was no objective and substantive understanding of the conflict during the escalation of the dispute. Both states were using information to suit their claims and combative postures in the public sphere. Chandrababu Naidu claimed that the increased height of the dam would turn his state into a desert. J H Patel declared that he would not stop construction on the dam at any cost. The front page article in the *Times of India* on August 12, 1996 observed:¹⁶²

¹⁶⁰ Pani, Narendra. “Redefining Delhi: Helping the Centre to hold.” *The Times of India (1838-2004)*, August 22, 1996, 12. ProQuest Historical Newspapers

¹⁶¹ Ibid.

¹⁶² “UF sets up CMs’ panel to resolve dam crisis.” op.cit.

UF [United Front] sources ... stressed that the hard line adopted by Mr Naidu and Mr Patel was for public consumption so that people in their states did not think their interests were not being taken care of. Indeed, both CMs repeatedly stressed that their first concern was the interests of the people of their respective states.

The next day's editorial pointed out, "...far too many provincial and parochial undertones which vitiate the technical merits of the issue" defined the character of interstate water disputes.¹⁶³ Indeed, the conflict escalated, in this instance, purely by political expediencies and much less by objective considerations. The editorial also noted that Chandrababu Naidu was under pressure from the opposition, accusing him of not being effective. The Congress party in AP also took advantage of the brewing disenchantment with Naidu's pro-market policies and price rises to escalate political mobilization against the Almatti dam issue.

Farmers in the Krishna's delta districts were protesting against price rises. A *bandh* (call for close down as a form of protest) called by the Congress party-led opposition on July 31, 1996 was a success. Naidu had to act and was under pressure to use his position as the Convener of the UF; he had to address the Almatti dam issue, where it was perceived as Deve Gowda using his position to his home state's advantage.¹⁶⁴ On the other hand, J H Patel in Karnataka too was under pressure from within. The opposition parties in Karnataka moved a no confidence motion against his government – for his apparent failure in going ahead with increasing the dam's height.¹⁶⁵

Thus, the Almatti conflict was directly driven by local domestic politics. The TDP continued its threats of withdrawing support from the UF government at the center, while the J H Patel

¹⁶³ "Postural problems." *The Times of India (1838-2004)*, August 13, 1996, 12. ProQuest Historical Newspapers.

¹⁶⁴ "Naidu in a quandary over Almatti issue." *The Times of India (1838-2004)*, August 14, 1996, 1. ProQuest Historical Newspapers.

¹⁶⁵ "Centre back to square one over Almatti row: Karnataka opposition seeks no-trust move." *The Times of India (1838-2004)*, August 14, 1996, 1. ProQuest Historical Newspapers.

government in Karnataka persisted with its belligerent responses. When the CM panel sent its technical team, J H Patel publicly set the terms for allowing the team to visit the Almatti dam site: he would allow them to do so only if they would also inspect the 'illegal' projects being constructed by AP in a bid to usurp the surplus waters, especially in the Telugu Ganga project. These proclamations, however, were vacuous and there was no way he could set such terms.

Karnataka was simultaneously engaged in a similarly fierce battle with Tamil Nadu over the Cauvery dispute. Much time in the assemblies of Karnataka, AP, Tamil Nadu, and also in the Upper House of the Rajya Sabha at the national level, was occupied with political debates over interstate disputes.¹⁶⁶ This political showmanship was not just a one-way escalation to national levels, but worked the other way too and extended to local levels with greater political mobilizations of the masses in support of their respective states' interests. In Karnataka, the main opposition parties, the BJP and the Congress party, called for protests when the technical team visited the state. The Congress also brought pressure at the national level to withdraw its support from the UF.¹⁶⁷

Eventually, the CM panel and the Expert Technical Team proved to be a dilatory measure to defuse the conflict temporarily. AP demanded legal status for the panel, while Karnataka argued that the CM panel's decision could not be binding. The delays of the Technical Team and a devastating cyclone in AP in December 1996 diverted the attention away from the Almatti. The issue subsided temporarily. Political relations between Naidu and Deve Gowda

¹⁶⁶ "RS thrown out of gear over Almatti dam issue." *The Times of India (1838-2004)*, August 28, 1996, 7. ProQuest Historical Newspapers.

¹⁶⁷ "Withdraw support to UF, Kesri urged." *The Times of India (1838-2004)*, October 26, 1996, 8. ProQuest Historical Newspapers.

suffered, further aggravated by the TDP's perceptions of Deve Gowda's step-motherly attitude in providing assistance to AP after the cyclone.

Meanwhile, farmers, farmer associations, and civic society organizations in both Karnataka and AP filed legal cases. Karnataka and AP governments also filed the Original Suits with the Supreme Court, which gave directions to continue with the dam's construction, pending its final decision. In the midst of this furor, the CM panel gave its report in February 1997, with a decision against increasing the dam height. This immediately brought the Almatti back to the national stage.¹⁶⁸ Karnataka did not consider the CM panel decision as binding.¹⁶⁹ AP requested Deve Gowda to issue directives to stop construction on the basis of the CM panel recommendations. Deve Gowda refused to intervene, suggesting that it had to be resolved between the two states.¹⁷⁰ Karnataka's Congress party accused Deve Gowda of trying to save his chair (as Prime Minister), though his supporters claimed that Deve Gowda would rather give up his position than let his state's interests suffer.¹⁷¹ Fali Nariman, a highly respected lawyer, aptly observed in relation to these politics: "So much so that all members of one political party are one side in one state, members of same political party on the other side in the other state; they cannot agree on this subject. They are always conscious of political ramifications and need to take care of their constituencies."¹⁷²

¹⁶⁸ "Andhra, Karnataka lock horns over Almatti dam again" *The Times of India (1838-2004)*, March 23, 1997, 9. ProQuest Historical Newspapers.

¹⁶⁹ "Almatti panel report is not binding on us: Patel" *The Times of India (1838-2004)*, March 25, 1997, 7. ProQuest Historical Newspapers.

¹⁷⁰ "Gowda rules out intervention by Centre in dam row" *The Times of India (1838-2004)*, March 24, 1997, 7. ProQuest Historical Newspapers.

¹⁷¹ "PM finds an ally in Nanje Gowda" *The Times of India (1838-2004)*, March 24, 1997, 7. ProQuest Historical Newspapers. Nanje Gowda was an MLA of BJP, one of the main opposition parties in Karnataka. Yet he supported Deve Gowda's cause, apparently for the reason that they belong to the same community.

¹⁷² Personal interview, Fali Nariman, 9 July 2012, New Delhi.

Both governments in the downstream states from Karnataka were unhappy with Karnataka, AP over the Krishna and Tamil Nadu over the Cauvery. Both these governments – TDP in AP and DMK in Tamil Nadu – were UF partners. On top of it all, AP and Tamil Nadu were celebrating the operationalization of the Telugu Ganga project; Karnataka turned out to be the common foe. Deve Gowda government at the center alienated two crucial allies due to water disputes.¹⁷³ The Congress party took advantage of the melee and staked a claim to form the government at the center. Its claim was defeated. It agreed to continue its support to the UF government, but on condition that Deve Gowda would be replaced. The discontent within the UF helped it to concede and Deve Gowda was eventually replaced by I K Gujral as the next Prime Minister of the UF-led government.

The political brinkmanship continued over the Almatti dam even after Deve Gowda's exit. In 1998, BJP's Vajpayee became the Prime Minister with TDP's support as part of the NDA. The BJP too faced a similar dilemma with its Karnataka state's unit demanding continuance of Almatti construction while its main ally, TDP, opposed it.¹⁷⁴ The Supreme Court initially halted construction in November 1998, but later allowed construction of crest gates in December 1998.¹⁷⁵ While the conflict was before the Court, the politics around it thrived. In AP, the Congress party kept the ruling TDP on its toes. Chandrababu Naidu sought

¹⁷³ "Almatti dam row has put the UF government in the bind" *The Times of India (1838-2004)*, March 30, 1997, 7. ProQuest Historical Newspapers.

¹⁷⁴ Balram, H.S. "Local issues lodge BJP on horns of dilemma in south" *The Times of India (1838-2004)*, July 26, 1998, 10. ProQuest Historical Newspapers.

¹⁷⁵ The crest gates installation is a specific technological intervention to address the stalemate over the dispute. These gates could be used to temporarily increase height to impound water. It was alleged that Karnataka chose to use this technology to take advantage of its flexibility, and also to address uncertainties associated with the outcome of the Supreme Court's decision. The Supreme Court initially instructed to cease construction while later allowing it, but at its own cost and risk – suggesting the possible revoking of its interim order.

Vajpayee's help in resolving the matter, but in vain.¹⁷⁶ The issue worsened during the monsoon season, and political posturing in public forums persisted. The Supreme Court had to finally pass orders restraining the states from going to media, to avoid further escalation by politicization of the conflict.¹⁷⁷ Flouting such restrictions was not uncommon with interstate water disputes. But when then Chief Minister of Karnataka, S M Krishna, discussed the dispute in the media, the Supreme Court took a stern view of the matter considering the inflammable nature of the conflict, and initiated contempt of court proceedings against him.¹⁷⁸ The Chief Minister was forced to eventually apologize to the Court.¹⁷⁹

Maharashtra too joined these transboundary politics of antagonism, alleging increased Almatti height and Karnataka's failure to drain water in time led to floods in its territories.¹⁸⁰ These antagonisms did not remain restricted to Maharashtra's official protests to Karnataka and other means of statecraft (such as lobbying the Prime Minister). Other nonstate actors also joined and filed a Public Interest Litigation (PIL) with the Supreme Court, alleging Karnataka's negligence.¹⁸¹

The politics over the Almatti continued even while KWDT-II was adjudicating the Krishna dispute. However, not all these politics were antagonistic, with the states showing an

¹⁷⁶ "Naidu seeks Vajpayee's help on Almatti dam" *The Times of India (1838-2004)*, December 1, 1999, 7. ProQuest Historical Newspapers.

¹⁷⁷ "SC tells states not to rush to media on Krishna water issue" *The Times of India (1838-2004)*, January 20, 2000, 7. ProQuest Historical Newspapers.

¹⁷⁸ "SC issues notice to Karnataka CM for airing views over Krishna issue" *The Times of India (1838-2004)*, January 26, 2000, 7. ProQuest Historical Newspapers.

¹⁷⁹ "SC accepts Krishna's apology, drops contempt proceedings" *The Times of India (1838-2004)*, February 9, 2000, 9. ProQuest Historical Newspapers.

¹⁸⁰ Viswa Mohan, "Maha blame on K'taka for floods in rural areas" *The Times of India (1838-2004)*, August 6, 2005, 15. ProQuest Historical Newspapers.

¹⁸¹ "PIL filed against K'taka govt" *The Times of India (1838-2004)*, August 7, 2005, 5. ProQuest Historical Newspapers.

agonistic spirit on rare occasions. Following a poor monsoon in 2002, for example, Karnataka released water from the Almatti upon AP's request to meet its immediate and urgent needs.¹⁸²

5.4. The politics of emancipation: Nonstate actors' politics in a statist project

The transboundary politics beyond formal statecraft strategies in Maharashtra, the PIL by nonstate actors mentioned above is not an exception, but is part of the politics of emancipation – the mutually constituent and constructed politics of nonstate actors. The interstate politics of power discussed so far involve both governments and other political actors. As I have argued, these politics are a reflection or response to myriad multiscale political processes at other scales. Lest this discussion falls into the trap of scale fixing or 'imperialism' of categories of national/state politics, the politics should instinctively suggest the multi-scalar and dynamic construction of these politics. The close nexus between the politics of interstate water disputes and democratic politics should link their relationality with the substantive politics of contestation or emancipation, or not so substantive and politicized "vote bank" politics, which become visible and manifest as power plays at the national/state scales. The following sections discuss how this happens with the help of instances of transboundary politics over Krishna waters.

Transboundary water sharing is a statist project at international levels as well as in interstate water disputes. Under the IRWDA 1956, nonstate actors are not allowed to participate in interstate water disputes resolution. Yet the deeply connected and contingent nature of water politics with the everyday life of local people cannot confine these processes to strictly state

¹⁸² "AP asks Karnataka to release water from Almatti" *The Times of India (1838-2004)*, December 16, 2002, 11. ProQuest Historical Newspapers.

spaces. Interstate water disputes display and forcefully articulate the mutually constituent and constructive nature of state-society relationships (Migdal 2004, Mitchell 1999).

Transboundary politics in interstate water disputes show that statist processes are indirectly shaped by processes outside state spaces. The *politics of power* are in fact a making of the *politics of emancipation*, the multiscalar political processes emerging from, or targeted at, local constituencies. The mutually constitutive and constructive manner of these two categories of politics is intuitive, but this is often ignored and treated differently. It is especially so with respect to interstate water disputes because of the statist, legalist, and opaque nature of resolution. In the absence of formal means and avenues for participation, nonstate actors - not always restricted to the direct beneficiaries or victims of water sharing - engage with the state in myriad ways. The nonstate actors' strategies include formal representations and protests, social movements often mobilized by constructions of identity or victimhood, strategic alliances with mainstream political parties, etc. In the following discussion, I present the nature, strategies, and processes of nonstate actors from AP.

Nonstate actors engaging in interstate water disputes may belong to any category: individuals, local leaders, farmer associations, civic society organizations, etc. Their reasons for engaging in interstate water disputes politics is not always as simple and straightforward as a struggle for their due water shares or for their emancipation. Their interests and drivers often have layers of political considerations in addition to substantive issues associated with water. For example, among my respondents, for individuals such as Kolli Nageswara Rao, Vadde Shobhanadreeswara Rao, Yerneni Nagendranath – all part of mainstream political parties directly or indirectly - it is not always their basic and fundamental need and access for irrigation water, or their responsibilities towards their corresponding political constituencies and the need to represent their interests, that dominate. Their participation served these

interests but their political ambitions as well. Their implicit or explicit association with mainstream political parties is always evident, though it changes over time. The alignment of political aspirations and the constituency interests varies. But the complementary and mutually beneficial nature of this alignment cannot be missed. Kolli Nageswara Rao belongs to the Community Party of India and is known to have represented the interests of AP farmers in the Krishna basin. Similarly, Vadde Sobhanadreeswara Rao was an MLA and MP of TDP, a former Agriculture Minister of AP, and has published books on agriculture in the Krishna basin in Telugu. Yerneni Nagendranath was earlier in the TDP and his wife was an MLA and a Minister of the TDP government. He is no longer with TDP, but heads the AP Rythanga Samakhya (APRS - Farmers' Federation of AP), set up to pursue farmers' interests in the state. Several farmer associations in the region, some of them operating since 1967, joined this federation in 2005 to engage in coordinated efforts for pursuing their interests.¹⁸³

The overt or covert affiliations with mainstream political parties are for particular reasons. These political leaders often initiate, associate with, or lead these community groups, farmer associations, or civic society organizations. Water and politics are so closely entwined that not infrequently political leaders emerge out of the political struggles for water. The other avenue is that the leaders of water struggles often get absorbed into mainstream political parties, because of their political capital accumulated as an outcome of their struggles over water. In Krishna basin districts, both in Karnataka and AP, political leaders are closely identified with their work associated with struggles over water resources. Most popular

¹⁸³ APRS has quite a few achievements to its credit. Though the federation largely includes farmer associations from coastal Andhra and Rayalaseema districts (the Seemandhra region), their efforts benefitted farmers across AP. The federation fought successfully for a minimum support price (MSP) for rice on par with wheat. Through an agitation, they successfully had 250,000 of "temporary agriculture electricity connections" all over AP regularized. The federation also took up causes of fish farmers and other issues of rehabilitation of irrigation projects in the region.

former Chief Ministers in both states, Dr (late) Y S Rajasekhar Reddy (YSR) of the Congress party in AP, and Deve Gowda of Janata Dal (S) in Karnataka, are primarily identified with their political struggles and mobilizations over water resources.

There are also other prominent individuals who prefer to remain neutral with respect to their alignments with political parties. Activists like Akkineni Bhawani Prasad and Cherukuri Veeraiah are former technocrats who worked in the irrigation sector for many years and now possess extensive knowledge of the sector. They remain active as opinion makers through their writings, and engage in activities to mobilize support for farmers' causes. They function as individuals or through voluntary organizations in the broad category of Civic Society Organizations (CSOs). Akkineni Bhawani Prasad is associated with Vijayawada-based Rythu Seva Sanstha (Farmers' Services Organization) and is also linked with many other similar platforms. Cherukuri Veeraiah works for DKSSSS (Dr K Sriramakrishnaiah Smaraka Seva Samithi), a Hyderabad based memorial trust.

The statist nature of interstate water allocation or dispute resolution leaves little choice for the nonstate actors. They have to function via mainstream politics. They approach political leaders or offer support to them, in exchange for support to their cause. Akkineni Bhawani Prasad put this relation succinctly,

The key part is the willingness to respond in the hour of need... when political leaders do not respond when the situation demands, there is no use. You always have political leaders associated with their respective political parties and their ideologies. But there are few leaders who go by their convictions and beliefs, and guide their own parties' ways and strategies. For example, I always received good response from Shri Pinnamaneni Koteswararao [a long time Congress leader, former MLA and also Zilla Parishad Chairman, Krishna district, died in 2012]. I used to go to him and request him to raise the issue with the Chief Minister or the

concerned officers. After he died, I am relying more on Mr Mandali Budhaprasad, another receptive Congress leader from this region.¹⁸⁴

Mandali Budhaprasad belongs to the category of leaders for whom interstate water-sharing politics and mainstream politics align. He is a Congress leader, an MLA who held ministerial positions in the government. He also holds positions with farmers associations, such as the Krishna Delta Parirakshana Samithi (Coalition for Krishna Delta Conservation).

The CSOs and other nonstate actors bridge a crucial link between the mainstream political parties and their constituencies – the beneficiaries or the victims of water sharing. The following anecdote shared by Akkineni Bhawani Prasad illustrates this. When Akkineni Bhawani Prasad and others launched Krishna Delta Parirakshana Samithi in 1992, they invited Chandra Rajeswara Rao (who died in 1994), a senior Communist Party member in AP and a freedom fighter. Rajeswara Rao was apparently puzzled at the invitation and asked,

“Do you know that we too have our own [Party’s] farmer organizations?” Bhawani Prasad said “Yes, sir, but why is it that the organizations of your party have not so far done anything or spoken about farmers’ troubles in the Delta. It is July 22nd today, by this time paddy transplantation operations should have been over. Forget transplantation, there is no water for even seedling operations in the Delta yet.” Rajeswara Rao did not respond, but asked Bhawani Prasad to join him at a gathering of local Party leaders next day. The next day, Rajeswara Rao asked Bhawani Prasad to put the same question to his colleagues. His Party colleagues too agreed with Bhawani Prasad’s observations and said that it was happening for the last seven or eight years. Chandra Rajeswara Rao was upset that his party colleagues did not take up the cause when they knew it was happening for such long periods.¹⁸⁵

¹⁸⁴ Personal interview, Akkineni Bhawani Prasad, Vijayawada, 20 February 2013.

¹⁸⁵ Personal interview, Akkineni Bhawani Prasad, Vijayawada, 20 February 2013.

The CSOs often address this kind of disconnect of the mainstream political parties. It is certainly a mutually beneficial complementary relation. Mainstream political parties want to be seen as taking up the cause of farmers, thus remaining relevant to, and nurturing, these constituencies. At the same time, the farmers (represented via CSOs) need the political leaders to engage with the state apparatus on their behalf. In the instance mentioned above, Bhawani Prasad claimed that the opportunity paved the way for the Communist Party to change their stance on the Pulichintala Project. Until that time, the Party did not believe the project would help Krishna delta farmers. Chandra Rajeswara Rao convinced the politburo of the party and had the party pass a resolution in support of Delta farmers' demands for implementing the Pulichintala Project.

Another instance illustrates how nonstate actors' politics materialize and matter in substantive ways is the following. The politics do not just sensitize the impervious state processes of dispute resolution, but also provide reasons for alliances, collaborations, and collective action. When the KWDT-II was hearing the arguments about the Almatti dam and the linked regulated flows downstream, the tribunal's decision about ensuring a minimum of 10 TMC during June-July periods (Clause XIII of the final award, KWDT II 2010, 808-809) was a direct outcome of the representations made by the APRS. APRS demanded these minimum flows to meet the critical needs of sowing operations during these months in the Krishna delta area downstream.

During 2011 and 2012, as part of the Telangana separate-state agitation, some groups from Telangana approached the AP High Court seeking directions not to release water from the

Nagarjunasagar Project to protect the drinking water interests of Hyderabad city.¹⁸⁶ The High Court passed orders in favor; the Krishna delta farmers protested and came together under the APRS to counter this. In an organized meeting of farmers groups and associations under the auspices of the APRS, the farmer groups resolved to pursue their interests on several accounts besides countering the High Court's directions. These resolutions included: (a) to make efforts to bring to the attention of the High Court the adverse impacts of their directions to an estimated 1.2 million acre *kharif* crop (monsoon crop) in the Krishna delta; (b) to take steps to legally counter these directions and take up an agitation across party platforms; (c) to sensitize and assist the AP's legal team for the Brijesh Kumar tribunal in communicating the needs of Krishna delta farmers; and, (d) to demand setting up a Committee to review the plans and programs for modernization of delta irrigation plans.¹⁸⁷

The APRS pursued these resolutions diligently. They made presentations to the Chief Minister and the AP legal team to demand regulated flows for the critical period of sowing operations before the KWDT-II. These efforts resulted in the tribunal's specific provisions for minimum flows during June-July months from the Almatti dam.¹⁸⁸ The Krishna delta farmers argued that unless certain guarantees are in place, their crops could not be protected from increasing competition for water upstream. Even though allocations are in place, if water does not arrive in time, it adversely affects agriculture in the delta areas at the most downstream end of the river. The irony is that these delta areas were historically the first to augment with Krishna waters. And their rights are protected on the basis of prior

¹⁸⁶ Yerneni Nagendranath, August 2, 2012, "Krishna delta saagu varshadhaaramena? Immediate Govt. Response required to prevent disaster in Krishna Delta which may impact food shortage in AP." *Rytanga Samakhya blog*", <http://rytangasamakhya.blogspot.in>.

¹⁸⁷ "Teermanalu: Krishna delta rytulu hakkulu parirakshanaku jarigina samavesam [Resolutions of the meeting for protecting Krishna delta farmers' rights]," *Rytanga Samakhya*, dated 27 July 2012.

¹⁸⁸ Personal interviews, Yerneni Nagendranath and Yerneni Venkat, 25 November 2013 at APRS office, Eluru.

appropriations, even at the cost of perceived unfair and uneven distribution by other claimants. Yet their interests are the most vulnerable and threatened by increased competition from upstream areas.

This temporal dimension of ensuring water at critical times adds further complexity to transboundary sharing. Vadde Sobhnadreeswara Rao, who wrote extensively on agriculture and the agroecology of the region, observed that this is going to be a crucial factor for the delta farmers. In the 1960s, water used to reach delta districts usually during June 1 to July 15, but these days it sometimes does not arrive until November.¹⁸⁹ The temporal delay is a critical issue for delta farmers in other ways too. The APRS claims that the later rains in the season often arrive as flash floods. This not only causes damage to crops, but also results in ‘wasted’ water rendering some portion of ‘allocations’ useless.¹⁹⁰ Emergence of conflicts and the associated transboundary politics are not just about allocations, but are also contingent on ecological factors, which are susceptible to not only to uncertainties such as the vagaries of rainfall, but also to the demands of critical cropping periods and agricultural operations.

These records and histories of political struggles present a positive picture of vibrant and active civic society and community groups. But the flip side is that often these struggles are poorly informed and susceptible to misinformed or manipulative discourses. This is largely due to the statist, technocratic, and opaque nature of interstate water disputes and their resolution (Richards and Singh 2002). The emotive nature of water and its ability to invoke notions of identity, and linked imaginations of rights and claims, makes it easy to mobilize political support across interest sections and offers political dividends. The *fixity* of scale at

¹⁸⁹ Personal interview, Vadde Sobhanadreeswara Rao, 21 July 2012, Vijayawada.

¹⁹⁰ Nagendranath, Yerneni. *Krishna nadi jalaala vivadala tribunal –II ichchina reportpi visleshana* [An analysis of KWDT-II report – a note in Telugu], (Eluru: APRS, 2011).

state level in formal allocation processes makes water-sharing politics attractive in appealing to larger constituencies across a state.

The law (tribunals) applies equitable apportionment at the fixed territory of states. Equity – as understood and implemented by law – is *bounded* by state boundaries and *fixed* at this scale. These *fixed* and *bounded* equities can be obscuring inequities at lower scales such as in regions and districts. Such spatial inequities exacerbate the already misinformed and complex discourses of transboundary water sharing. The bifurcation of AP state on 2 June 2014 was precisely driven by the spatial unevenness of distribution of irrigation benefits. Perceptions of unfair and uneven distribution of benefits, obscured by complex legal and technical notions of equity, sustain discontent and political maneuvering.

Consider how this fixity of scale triggers politics of a different kind. The Telangana separatist agitation emerged from the premises of uneven and unfair distribution of irrigation benefits between the regions. The delta farmers became wary of the gaining momentum of Telangana separatist agitation. It prompted them to organize and engage with the government to address their concerns. The High Court responded to the immediate concerns over Hyderabad city drinking water security within the broader available allocations for AP. Though the Krishna delta farmers appealed to the High Court for meeting their needs, it also made them realize the need for guarantees and pursuit of these within the KWDT-II.

This instance fits into a kind of generic framework that explains the vibrant and thriving transboundary water politics, and reproduction of democratic spaces through active decentering of state. Uneven spatial distribution of irrigation benefits brews discontent. This generates demands for either greater allocations, or guarantees for existing uses. This is not restricted to just water allocations, but can turn into competition between different users of

water, as in this instance between irrigation requirements of Krishna delta farmers vs. Hyderabad city's drinking water needs, in essence a simple contest between urban and rural needs. The interesting part is how such contests are resolved. When these contests are colored with a regional divide invoking the notion of a larger historical injustice, they become much more effective in pursuing their respective goals; they appeal to greater mobilization of political support and accrue greater political benefits.

The regional uneven distribution of irrigation benefits is the central reason for contentious politics between Seemandhra region and Telangana region in AP. Here, history and geography play key roles. The geography of both major rivers in AP, the Krishna and the Godavari, puts the Telangana region at an advantage as the upstream entity. Both rivers flow to Seemandhra from Telangana. But this geography is also a disadvantage for Telangana, for it does not allow diversion by gravity to the rest of its region; it requires lift and involves additional costs. This upstream status of Telangana and the region's increasing demands for their fair share generates apprehensions in the Seemandhra region, advantaged by history with earlier and advanced irrigation development. Whereas the allocations work on the basis of augmentation of water over space through projects; and the existence of most projects implemented for AP are located in the Seemandhra region, puts Seemandhra at an advantage. Most claims and arguments fueling the separatist state agitation emerged from such asymmetries. In this instance of Hyderabad city vs. delta irrigation benefits, the Telangana separatist state interests took up the cause of Hyderabad city. This has been escalated using the discourse of historical regional divides and inequities. Eventually it became a conflict between the regional interests of Telangana and Seemandhra.

This is not a recent phenomenon. These politics around regional unevenness have always been there. It is the increasingly polarized political space and opportunities for political

mobilization that is making these struggles much more visible. Naram Krishnarao, the former officer-in-charge of Hyderabad water needs since the times of the Nizam's rule (i.e., before independence), recalled the challenges faced in dealing with these politics. When drawing Krishna waters to satisfy Hyderabad drinking needs was mooted in the 1970s, it was met by strong resistance from political leaders of Seemandhra. A strong leader from the Seemandhra region, Challa Subbarayudu threw an open challenge, "Even if a drop of water is brought from Krishna [to Hyderabad], do not call me by my name".¹⁹¹ The fractured (re)making of the historical geography of Indian states and their boundaries offer avenues to nurturing such transboundary politics. This happens far more effectively and vigorously with respect to transboundary water sharing, for it entails many other asymmetries, ambiguities, and antagonisms, as detailed earlier in Chapter 4.

5.5. Concluding discussion

The statist and opaque nature of transboundary water sharing and dispute resolution, combined with the asymmetries, ambiguities, and antagonisms contributed by the particular political ecology of interstate water disputes, facilitate and nurture transboundary politics of various kinds in interstate water disputes. These politics not only reflect interstate relations between riparian states, but also redefine and reproduce transboundary political spaces. This chapter makes an attempt to delineate the contours and topography – the counter topologies – of these transboundary political spaces. It also traces and uncovers the relational linkages of multiscalar political processes inscribing these counter topologies.

¹⁹¹ Personal interview, Naram Krishnarao, 14 November 2011, Hyderabad.

I have discussed these politics under two mutually constitutive and constructed categories: the politics of power and the politics of emancipation. These two categories of politics showcase different kinds of decentering of state in the process of engaging with the statist project of interstate water disputes and their resolution.

One of these, the politics of power, displays how power relations of political forces shape and influence the outcomes of interstate water sharing. These forces contribute to the emergence, recurrence, escalation, and sometimes mitigation of water conflicts through myriad processes and strategies involving contestation, political mobilization, cooptation, and collaboration with the state. These processes and strategies are enabled by what I called political configurations, the spatial constellation of powers dynamically reorganizing the power relations and asymmetries. The equations between political parties holding power at the center and the peripheral states contribute to the manner in which the disputes are manifested. Though these political configurations involve national and subnational governments, the processes of engagement between these governments are seldom within the state spaces, but play out outside the domains of state and statist processes. This is much more perceptible when the other politics of power – the power plays are considered. The power plays involve political parties other than those holding power, but are also contingent to other significant players in alliance, collaboration, or conflict. In the Telugu Ganga project conflict, Tamil Nadu had to balance between exercising solidarity with the ‘Southern Council’ for their strategic cooperation and their obligation to the center upon which the state relied for financial support. Similarly, the political alliance of the TDP in forming the UF government at the center was conflicting with AP’s interests at the state level; the UF elevated Deve Gowda to Prime Minister, but he was perceived to favor Karnataka’s interests by extending financial resources for increasing the Almatti dam’s height. Thus, none of these processes

that shaped the Krishna dispute, in either the Telugu Ganga or Almatti dam conflicts, were part of statist processes of Krishna dispute resolution or mitigation. Yet these processes led to transforming the nature and extent of the contentious issues between the two states, which eventually had to be adjudicated by the KWDT-II. Consider only the Telugu Ganga project: AP's self-interests in expanding the scope of the project to include an irrigation component – which was serving multiple political objectives of NTR – eventually recurred as a deeply contentious issue around the utilization of surplus waters.

The second category, the politics of emancipation or inclusion, is also an outcome of the tension between statist legal processes and nonstate actors' struggles for emancipation or inclusion. In the absence of spaces for articulating their interests, nonstate actors deploy these strategies for engaging with the state, seeking attention and redressal. These politics are similar to those in Partha Chatterjee's spaces of 'political society,' where a political relation with the state becomes necessary to gain access to their rights (Chatterjee 2004: 38). The political engagement and action is inevitable when institutions are inefficient and ineffective (Gupta 1995). The nonstate actors' struggles are for their rights or access that they believe they are entitled to, beyond what is already granted by statist processes. These struggles become tenuous because statist processes exclude these actors and/or the state denies avenues for articulating their rights. The restriction of interstate water disputes resolution to state governments makes this a conceivable condition. The nonstate actors' struggles from the coastal districts of AP discussed above use a variety of strategies such as alignment with political parties, contestation, cooptation, or collaboration with the state in pursuing their interests. For instance, APRS efforts in lobbying the state involve strategies of contestation and collaboration for acquiring a favorable ruling from KWDT-II for mandatory releases from the Almatti dam for critical cropping needs. These politics also clearly decenter state in

the process, by seeking relief in avenues outside the state processes. Their success in finding redressal suggests the radicalization and deepening of democratic spaces in India (Barnett and Low 2004).

Some of these politics of mobilization do not always play out around substantive issues. These politics emerge as an outcome of politicization for pursuing interests beyond rights and access to water. The politics of substance and the politics of politicization cannot be distinguished for differential treatment. However, these politics present a case for necessary institutional spaces and political practices to address them. The transboundary politics of antagonism, whether over substantive issues or otherwise, help in accentuating the interdependencies or interconnectedness in a counter-intuitive way. In spite of the availability of political opportunity structures bolstered by deepened democratic spaces to address such antagonistic politics, the adversarial engagements between states and associated uncertainties in availability of water lead to populations suffering. Appropriate institutional mechanisms are necessary to mitigate these negative impacts.

Evidence from the Krishna dispute confirms the logic of the mutually constitutive nature of boundaries and scale in political mobilization. The deployment of regional identities, between Telangana and Andhra regions, has been successfully used for political mobilization and to address the spatial inequities between the two regions. The KWDT-II's recognition of these inequities, and its provisions to address them in its award, reveals the potentially productive outcomes of the politics of mobilization. But this leaves such inequities unaddressed when these differences are not strong enough to enable political mobilization. These are perhaps addressed in the spaces of 'political society' as discussed above.

The politics of nonstate actors, and also state actors, in the emergence, recurrence, and mitigation of interstate water disputes offer opportunities for engaging with the theoretical issues of production of scale. My analysis of the political practices and processes in interstate water disputes presented above present some compelling insights for understanding scale-making in interstate water disputes and their resolution. The processes of political mobilization, escalation, or mitigation forcefully exhibit their deeply contingent relation with the state and its socio-spatial constructions (Brenner 2001). The strategies of engagement with the state are tailored to, or shaped by, the structural designs of dispute resolution mechanisms defined by the law. The nonstate actors engage with the state governments to ensure their interests are represented by the state government in adjudication processes. The farmers associations or other civic society actors align or approach the political parties to contest and engage with state governments. These avenues offer the required political opportunity structures, which restrict the 'scale-jumping' mostly to sub-national levels (Marston 2000), however temporarily these lead to 'scale-fixing' (Newstead, Reid and Sparke 2003). Beyond this, the state governments engage within the limits set by the IRWDA 1956. These struggles may sometimes mobilize support from global networks, as in the Narmada case (Khagram 2004); yet these struggles are 'fixed' within the legal structures prescribed by the IRWDA 1956. This empirical evidence begs to revisit the debates around the social construction of scale to explore some ontological and epistemological questions in geography.

Chapter 6: Synthesis and conclusions

Focusing on interstate water disputes in India, my research follows a ‘counter-topographies’ (Katz 2001) narrative analyzed from the perspective of an ‘anti-geopolitical eye’ (O’tuathail 1996). It studies the practices, policies and politics of interstate water disputes resolution in India, including the case of the Krishna water dispute between the states of Andhra Pradesh, Karnataka, and Maharashtra. My analysis allows me to present five sets of conclusions, three sets of which correspond to the three theoretical streams upon which the analysis builds: the political geography of boundaries and scale; political ecology; and state and democracy in South Asia. In addition, the research contributes to two other themes: theorizing transboundary water conflicts, and public policy of interstate water disputes and their resolution in India. I discuss these contributions in the following sub-sections.

Before I proceed to presenting my conclusions, I want to briefly highlight the following: this research on interstate water disputes reveals and elaborates the dimension of materiality and spatiality of the overarching and overbearing postcolonial condition of India. This is unlike the cultural argument that has been posited extensively; instead it confronts the material and spatial implications of postcoloniality in the present. This is not to imply that cultural arguments do not exhibit or expose the spatial and material implications. But the specific feature that this research reveals is the politics of the irreversible spatial and material changes caused by colonial history. The Krishna river water dispute’s emergence and recurrence has its roots in the spatial unevenness and inequities of colonial India, and the embodied historical power asymmetries inherited from colonial rule. The politics of contestation and conflicts over the Krishna river have often emerged from this ecology of the present, which is structured by the history of colonial and imperial interests. Thus the politics of interstate

water disputes are really about resolving these tensions of the colonial present. This colonial present is not just constructed by the structural and institutional forces represented by Article 262 of the constitution barring the Supreme Court's jurisdiction in interstate water disputes, but also in a spatial and material sense is represented by the spatial inequities due to, for instance, the need to protect 'prior appropriation rights.'

Postcolonialism, we might say, has a constitutive interest in colonialism. It is in part an act of remembrance. Postcolonialism revisits the colonial past in order to recover the dead weight of colonialism: to retrieve its shapes, like the chalk outlines at a crime scene, and to recall the living bodies they so imperfectly summon to presence. But it is also an act of opposition. Postcolonialism reveals the continuing impositions and exactions of colonialism in order to subvert them: to examine them, disavow them, and dispel them. (Gregory 2004: 9)

The postcolonial condition is not just an 'act of remembrance,' as Derek Gregory so eloquently wrote. It can also become the new normal, a new order of existence. The condition can transform into a much deeper structural condition beyond recognition, profound impact on the present. Paraphrasing Ashis Nandy, 'postcolonialism informs the most interpretations of postcolonialism; it colours even this interpretation of interpretation.'¹⁹² The interstate water disputes discourse no longer questions the exception of Article 262 of the constitution and its rationale. Instead, it is taken as a 'given,' and the solutions are sutured to fix the symptoms of a larger and deeper structural conundrum, seen in the series of amendments embodied in the IRWDA 1956. These efforts are feeble resistance, the 'act of opposition,' to disavow, to dispel, and to subvert the colonial and imperial power relations embedded in Article 262 and subsequently the IRWDA 1956. But the spatial and material changes do not

¹⁹² In an incisive analysis of colonial 'self' and the western historiography of colonialism, Nandy observes: "The West has not merely produced modern colonialism, it informs most interpretations of colonialism. It colours even this interpretation of interpretation" (Nandy 1983: xii)

make it easy. They continue to remain active avenues for the recurrence of disputes. Thus, my research not only reaffirms D'Souza's (2006) thesis about interstate water disputes – of reproducing colonial and imperial power relations – but also extends this colonial present to reveal a larger and deeper structural condition in persisting with the colonial and imperial technologies embedded in the Article 262.

This postcolonial condition is further complicated by the 'institutional dementia' displayed by the disconnects delineated in Chapter 2, in policy making, conceiving institutional spaces, and political practices for engaging with interstate water disputes. First, the parliamentary lawmakers contradict the premises of the Constituent Assembly in choosing ad-hoc and temporary arrangements over a 'permanent' one to engage with interstate water disputes. This indeed has valid rationality of their own, to ensure expeditiousness and finality of decision making, and in avoiding litigation and the protracted delays therefrom. But this has proved ineffective, with such arrangements failing to evolve into complementary and converging mechanisms within the larger jurisdiction of the Supreme Court. The tribunal processes diverged into parallel mechanisms. Mired in serious constitutional ambiguities, the arrangements failed to ensure implementation of the awards or compliance by states; moreover, they also proved ineffective in arresting or mitigating dispute recurrences. Critically, the arrangements also deviated from the original vision of a deliberative approach, and have degenerated to turn the tribunals into spaces of adversarial and litigatory relationships. This can be attributed both to the shortsighted amendments to the law and to the increasingly querulous and competitive nature of interstate relations. These disconnects reflect the state and state-making in India as 'drowned' epistemologies of postcoloniality, devoid of sensibilities to changing politics and societal relations.

In addition to unravelling these changes, this research into interstate water disputes also allows engaging with various other streams of knowledge in productive ways, besides advancing the nascent body of work for theorizing transboundary water conflicts. It also demonstrates the potential of post-structural approaches, after Furlong (2006, 2008), using advances in fields such as critical geopolitics and political ecology, to understand transboundary water conflicts. I summarize the lessons learned under the following five subsections below.

6.1. Boundaries and scale: ‘jumping’ politics and ‘fixing’ political geographies

Furlong (2006, 2008) advocates for deploying concepts and analytical tools from critical geopolitics and other allied fields of geography to address a variety of limitations in International Relations approaches for theorizing transboundary water conflicts. This research employs conceptual and analytical tools from recent advances in political geography, especially from boundary studies and production of scale.

The enlarged scope of boundaries and its conceptual link with production of scale has benefitted understanding the multiscalar and dynamic nature of interstate water disputes in all its dimensions of emergence, recurrence, and mitigation. The complex history of cartographic enframing of geography in India evidently remains unsettled and is a work in progress (Anderson 1991, Gregory 1994, Sparke 2005). The creation of India’s 29th state of Telangana in 2014 in response to decades of agitation is an illustration. The administrative divisions of states are merely cartographic spatial enframings of imaginative geographies of homogeneity, initially drawn on grounds of linguistic homogeneity. But these enframings underlie deeper – and highly fragmented – territorial imaginations and identities, which precede India’s own national imagination consolidated immediately after its independence through a swift and turbulent unification process. The boundaries and associated territorial imaginations continue

to be relevant in India's politics and sub-national geopolitical imaginations, politics, and political imaginations (Wood 1984). These are further overlaid by boundaries of social and ethnic divisions, interest groups, and other identity driven politics.

Interstate rivers cut across these cartographic representations of state boundaries, creating asymmetries of power and access, and simultaneously a functional relationship of water sharing-related interdependencies. Boundaries are not only markers but also (re)make power relations (Sparke 2009). These functional relationships, consolidated by history and geography, are disrupted or contested at multiple levels when administrative boundaries are reorganized. These disruptions and contestations are resisted by political mobilizations along the boundaries, often marked by difference and asymmetry. Formal modes of power and regulation, operating through law and institutions such as the tribunals for interstate water disputes in India, uphold and impose the epistemic authority of cartographic divisions. These impositions also often disregard boundaries inscribed by nature, for instance the river basin boundary, as has been seen in the adjudication by successive tribunals. These impositions, reconfigurations of bounding processes, accompany struggles of resistance and the politics of mobilization at multiple scales, as documented and discussed in the case study of the Krishna. Thus, the politics of interstate water disputes describe the moments of boundary reconfiguration or re-articulation of struggles, showcasing production of scale and 'scale-jumping' (Marston 2000, Newstead, Reid and Sparke 2003). Following Marston (2000), the scale-fixing is contingent upon available political opportunity structures. As the case study of the Krishna dispute illustrates, the lack of space for nonstate actors combined with deeply statist processes of dispute resolution mechanisms offer inadequate political opportunity structures for 'scale-fixing' or for arresting 'scale-jumping' (the escalation of disputes). As an outcome, the politics of contestation or mobilization is likely to be constant feature - as the

record of recurrences of the Krishna and other interstate water disputes suggests. While this reaffirms the mutually constitutive nature of boundary and scale, it also poses the old ontological questions about the scale structuration and the question of its contingent nature (Brenner 2001). What are the other sociospatial structurations that enable mitigation of disputes – the ‘scale-fixing’ of transboundary water conflicts? In this case, the intricate linking of resolution processes with the sociospatial structuration of the state prompts possible rethinking of this debate.

6.2. Political ecology: the politics of water ecologies and the ecologies of transboundary water politics

The anatomy of interstate water disputes – illustrated by the Krishna dispute – and more generally transboundary water conflicts forcefully reasserts the unique nature of political ecology. The “exceptionalism” attributed to transboundary water conflicts by the Joint Committee for Constitutional Reforms (1934) is clearly for a good reason. The particular ‘nonfugitive’ nature of water in a transboundary context poses complex challenges for law to grapple with; the semi-commons nature of transboundary water present elements of both private and common property rights. Understanding the complexity of transboundary water disputes is not possible in the absence of the whole range of tools offered by political ecology. The particular political ecology is a dynamic one driven by geographically induced power asymmetries between upstream and downstream entities at a fundamental level. Thereafter, a series of factors attributed to geography and history contribute to its complex and dynamic structure of asymmetries, ambiguities, and antagonisms. This is evidently true for any transboundary river water conflict in general, but in the case of interstate water disputes in India, the following sets of factors are found to contribute to its particular political ecology:

- i. As D'Souza (2005, 2006) argues, and which is reaffirmed and advanced in unequivocal terms by this research, interstate water disputes embody, and are embedded by, colonial and imperial power relationships. These power relationships are embodied as deeper structural conditions represented by Article 262, and are embedded and internalized in the form of prejudiced water sharing agreements under the rule of colonial power.
- ii. These prejudiced agreements do not simply affect power relations through unfair water sharing agreements in terms of legally advantageous positions and uneven allocations of water, but they also result in uneven geographies of water resource developments, and ultimately create irreconcilable inequities. These inequities tend to be difficult to reconcile because legal principles protect prior appropriation rights. Any adjudication has to engage with these inequities through contingent and discretionary approaches. Any decisions are subject to contestation, which leads to recurrence of disputes.
- iii. The broader processes of nation building, involving reorganization of state boundaries as occurred in India, have led to several intractable issues and ambiguities, which remain a source of contestation between states as evidenced by the history of Krishna dispute, in the 1970s as well as in the 2000s.
- iv. The tensions between administrative boundaries and the basin boundaries inscribed by nature pose a challenge for legal recourses in determining allocations. The law treats each state as a single integral unit with entitlements due for the entire state population. The cartographic boundaries reaffirm these geopolitical imaginations of identity; but the scientific rationale - informed by international customary law guidelines such as

the UN Convention 1997 – discriminate between populations within and outside basin boundaries. While both the Krishna tribunals chose to uphold the ‘entire state’ doctrine, the resultant tension remains a source of contestation between states. These tensions are further exacerbated by projects such as the Telugu Ganga, involving inter-basin transfers and transfer of waters to non-riparian states such as Tamil Nadu. The Telugu Ganga has remained a source of conflict between the Krishna dispute’s party states over the past four decades. In such high-stakes projects, as I have shown in Chapter 5, party politics and political configurations shape the manner of conflicts’ emergence, recurrence, and mitigation.

- v. The transboundary river waters’ hydro-geography is a complex phenomenon, and water allocations are subject to frequent contestation, both before and after tribunal awards. The data and its interpretation were a deeply contested topic before KWDT-I (D’Souza 2006) as well as the KWDT-II. States disagree on methods for estimating key parameters such as dependable flow and return flows. Even though allocations have been decided, the states disagreed with the sharing formula with respect to the schedule of water shares to be released. The KWDT-II’s proposed schedule has been contested by the states; they seek to approach the Supreme Court for its redressal. More generally, even when these formulas are mutually agreed, operationalization is mired by mistrust and manipulations between (or among) states, especially during low rainfall years when water availability becomes unreliable. Disagreements are quick to become politicized, invoking identity politics and leading to recurrence of conflicts. Interstate water disputes are particularly prone to such escalations due to the contribution of constitutional ambiguities to the institutional deficit for implementation of awards (Chokkakula 2014).

- vi. Uncertainties in water availability due to climate and environmental factors, combined with precautionary and conservative strategies of states (usual upstream states), create temporal inequities. If water is not released/made available at the right time (for, e.g., the cropping season or for drinking water), an escalation of conflicts can be triggered in the absence of effective transboundary governance institutions. In the Krishna dispute, the KWDT-II award included mandatory releases by Karnataka for AP to deal with this. But these spatial and temporal fluctuations in flows are not always predictable, and often cause recurrence of disputes, as in case of the Cauvery dispute (Chokkakula 2014).
- vii. Along with water quantity demand changes, water use priorities also can change and can lead to contestations. KWDT-I disallowed Maharashtra's proposal to divert Krishna waters out of the basin for electricity generation purposes, citing the need for using water for agricultural production during the 1970s when food security was a priority. KWDT-II allowed this proposal in the 2000s, noting that food security has been achieved, and Maharashtra can use water for electricity generation – a crucial need for the urbanization-driven economic growth of current times. States often contest deviations from proposed uses and the changing priorities of other states. While this has not yet led to interstate disputes in India, change in water quality is likely to become a major contributor to conflicts, just as it has in Europe (the Rhine river is an example) and other parts of the world. The record of international conflicts shows that the past decade has had more conflicts over quality and scarcity issues compared to those over quantity allocations (De Stephano et al. 2010).
- viii. Interstate water disputes emerge from many of the above substantive issues of asymmetries, ambiguities, or inequities, and are escalated along other 'markers of

difference’ – a variety of boundary constructions to invoke identity politics for political mobilization. Identity politics can be used to address substantive issues of interest groups, or to gain electoral benefits, or both. The multiscale politics of contestation and mobilization discussed herein for the Krishna dispute illustrate the deep nexus of interstate water-dispute politics and electoral politics. The politicization of water disputes is a frequently employed political strategy for pursuing electoral political goals. This nexus is illustrated by the history of the politics of power and the politics of emancipation in influencing and shaping the outcomes of the Krishna dispute. As this historical analysis further illustrates, party politics and political configurations also contribute to the emergence, recurrence, and mitigation of interstate water disputes (see e.g. Chokkakula 2014, Iyer 2004, Padhiari and Ballabh 2008, Swain 1998).

These are some features specific and particular to the political ecology of interstate water disputes. They can become sources of contestations leading to emergence and recurrence of conflicts. Generally, they apply to any transboundary water conflict. History, geography, spatial and temporal inequities, climatic and environmental uncertainties, techno-legal ambiguities, and/or temporal changes in use and priority can be source of conflicts. As I discuss below, these factors contribute to reconfiguration of power asymmetries and relations as well. However, the immediate purpose here is to highlight the particular political ecology of transboundary water conflicts where conflicts emerge from myriad sources of contestation – social, political, and spatial. This analysis of political ecology, while employing many tools and methods for analyzing political ecology, also advances the stream of knowledge in many new directions advocated by scholars. It pursues politics in forms of resistance-like civic movements and party politics; stresses connections of processes and institutions; and

interrogates knowledge production and institutionalized practices (Watts and Peet 2004). It showcases the political nature of ecological conditions and their power-laden politics (Robbins 2011) and addresses the critiques of depoliticizing of ecological conditions in transboundary water conflicts (Furlong 2006); and it examines multiscale asymmetries and inequities (Paulson, Gezon and Watts 2003).

6.3. 'Changing courses': State and democracy in South Asia

The political analysis of interstate water disputes generated some nuanced understanding about the state and democracy in India. It reveals the postcolonial nature of the Indian state in a form of deeper structural conditions. The colonial power relations are embodied and embedded in the form of material and operational practices under Article 262 of the constitution and the IWRDA 1956 legislation.

The multiscale politics of interstate water disputes – discussed under the politics of power and the politics of emancipation – reveal some interesting features of federal democracy and the deepening nature of democratic spaces. The analysis of contentious issues and their resolution by the two Krishna dispute tribunal awards also provides a sense of changing federal relations, from the vantage of point of the tribunals having been situated 30 years apart. The idea of federal relations is often addressed as an issue of center-state relations (e.g., Manor 2001) and less so from the perspective of interstate relations, or state-state relations. The tribunals adjudicated the disputes in two different phases of the Indian state's existence: in the 1970s when a single political party dominated its politics and the state was considered deeply centralized (Rudolph and Rudolph 1984); and in the 2000s, during the phase of domination of coalitional politics with increasingly assertive regional political powers (Kohli 2001). The nature of contentious issues and their resolution between the two tribunals reflects this changing nature of the Indian state and interstate relations. Some senior

advocates, who had been witness to resolution under both the tribunals, recall the contrasting difference between the attitudes and approaches of states. The states during the KWDT-I were far more forthcoming for resolving contentious issues through mutual consultation and cooperation, while those during KWDT-II are more inclined to litigate and delay the resolution. The KWDT-II award contrasts the behaviors of states and notes that the states during KWDT-I behaved in a spirit of cooperation. The award cites how the states agreed to use the 75% dependability formula and other seemingly intractable issues. The award laments that nowadays states do not want to agree on *any* matter of contention, in spite of the tribunal's deliberate efforts to facilitate negotiations.

As a matter of fact, we find that during the previous proceedings held before KWDT-I, parties perhaps have conducted in the spirit of cooperation which is evident by the fact that on many points either a State party would be coming forward for making a statement or on various issues they arrived at an agreement so as to resolve the controversy... However, it appears that the times have significantly changed during last about thirty to forty years. In the present proceedings, none of the parties seems to be viewing the matter in the spirit of cooperation and good faith. There is no agreement on any point of whatever nature at all. It is rather a tenor of adversarial litigation. (KWDT-II 2010, Vol I, p.162-3).

This perceived change also aligns with the apparent generational difference between the two tribunals. As the two Senior Advocates of the Krishna dispute, Fali Nariman (KWDT-II) and Javali (KWDT-I and KWDT-II) observed, functioning of the two tribunals also contrasted significantly. The KWDT-I had a deliberative and problem-solving approach, compared to the KWDT-II which involved litigatory and adversarial proceedings. These changes generally resonate with the changing nature of politics in political leadership in India. Sriramaiah,

advisor to the Government of Karnataka, laments the weakening leadership of the country.¹⁹³

He recalled that earlier leaders commanded the faith of masses and would not hesitate taking decisive action even if it compromised their state's interests, but served the larger interests of the nation. They were confident that they could go back to their constituencies and explain their decisions. But now, political leaders keep looking over their shoulders and are constantly worried about how they will justify their decisions. I interpret this impression of changing times as the growing nexus between interstate water disputes and electoral politics. Combative litigation, political posturing, and antagonistic politics characterize the political strategies in interstate water disputes. The many asymmetries and ambiguities in the political ecology of interstate water disputes offer avenues for politicization and political mobilization. In a recent article, I traced an episode of escalation of the Cauvery interstate water dispute between Tamil Nadu and Karnataka to demonstrate politicization trends for practicing antagonistic politics in pursuit of electoral political dividends (Chokkakula 2014). These politics of interstate water disputes have not, however, escalated to result in violence or secessionist movements, with the minor exceptions of civic unrest in the Cauvery dispute. The political opportunity structures offered by Indian democracy, as seen with Krishna dispute politics, seemed to have mitigated possible violent outcomes. Yet the costs of these disputes, the delays and uncertainties involved, are too high to let these recurrences continue.

As the case of the Krishna demonstrates, these antagonistic politics are addressed by the myriad political strategies discussed under the politics of power and the politics of emancipation. These politics demonstrate robust avenues for addressing and mitigating

¹⁹³ Sriramaiah has been associated with interstate water disputes issues since the beginning of his career with the GoK. He is now retired and serves as a consulting advisor to the GoK and extends support to the legal team of the GoK.

antagonisms, and reflect Mouffe's (2000) agonistic model of democracy. The fundamental 'political' nature of transboundary water politics need to be facilitated to transform into agonistic politics where 'the other' is imagined not as an enemy, but as an adversary. The states accept each other as a legitimate adversary, for the reasons of interdependencies induced by the transboundary river waters and the functional relationship accentuated by transboundary politics. Just as Mouffe stresses, transboundary water sharing in interstate rivers enable and recognize the coexistence of conflicting interests. The processes of negotiation and reconciliation, though not facilitated so efficiently and effectively by tribunals, allow 'temporary respites in an ongoing confrontation' (p.102). Yet "... the prime task of democratic politics is not to eliminate passions from the sphere of public ... but to mobilize those passions towards democratic designs" (p.103). The challenge therefore is to convert these antagonistic politics into agonistic politics for democratic designs through the creation of the right kind of 'ensemble of practices, discourses and institutions.' Even though the formal legal spaces of tribunals and the vibrant democratic spaces of multiparty democracy have so far helped to mitigate the disputes, addressing the serious institutional deficit for interstate water disputes resolution and implementation offers greater potential in further strengthening the Indian federal democracy. "The hallmark of a federal form," A.V. Dicey wrote some 20 years ago, is that the people "must desire union, and must not desire unity" (Tummala 1992: 532).

Further, the fascinating examples of multiscalar politics of nonstate actors in pursuing their interests in an otherwise deeply formal and statist project of interstate water disputes illustrate additional aspects of democratic spaces in India. Nonstate actors engage with these statist processes through a range of political strategies of alignment, cooption, collaboration, and contestation. The interest groups often align with political parties, coopt, collaborate, or

contest with state governments to represent their interests in interstate water disputes. These strategies, in which interest groups find ways of engaging with these statist processes through political forces working outside and away from the state, suggest an effective decentering of state, reflecting the deepening and radicalized democratic spaces (Barnette and Low 2004). An absence of spaces for articulating their struggles within the statist spaces forces these social forces to engage and rearticulate their struggles through these political strategies. As Lefebvre notes, “There is no democracy without a struggle against the democratic state itself, which tends to consolidate itself as a bloc, to affirm itself as a whole, to become monolithic and to smother the society out of which it develops” (Brenner and Elden 2009: 61). These are some exciting areas for future research. Transboundary politics offers other potential areas for searching differentiated meanings of radical democracy. The transboundary water conflicts’ tendency to offer avenues for perennial sources for the politics of conflict makes us wonder about the ‘affect,’ the ideological project of these politics, after Mitchell’s (1999) and Sparke’s (2005) ‘structural effect’ of state.

6.4. The ‘perennial presence of conflict’: Power and politics in theorizing TWCs

The particular political ecology of asymmetries, ambiguities, and antagonisms establishes the perennial presence of conflict in transboundary water conflicts. It also shows that the asymmetries are not necessarily uniform or predetermined; for instance, it is not necessarily always the case that the upstream state is at an advantage. When there is a history of prior appropriation, the downstream entity can have greater negotiating power. Similarly, ecological conditions are power-laden in many ways (as discussed in Chapter 4) and can change the configuration of power asymmetries. This contingent nature of power relations, deriving from the particular political ecology of transboundary water conflicts, offers an opportunity to engage with the known and popular body of work related to the

hydrohegemony thesis. The thesis recognizes the perennial presence of conflict in a transboundary water sharing relation, though does not address the sources of these conflicts. It relies on Gramscian concept of hegemon to argue that the exertion of hegemonic power in the transboundary relation ensures cooperation through securitization and other strategies (Zeitoun and Warner 2006; Zeitoun and Mirumachi 2008).

The analysis of interstate water disputes offers a critique to advance these efforts to theorize. It offers at least two useful insights. One, the exertion of a hegemon presumes absence of supra-structural institutions that enable uncontrolled exertion of the hegemon's power. In the case of interstate water disputes, the larger federal structure controls and regulate such an exertion of hegemonic power. This can also happen for international water conflicts through the 1997 United Nations Non-navigational Use of Freshwater Convention that came into force recently.¹⁹⁴ Two, the power relations and asymmetries cannot be predetermined. Ecological conditions can be power-laden, as shown by interstate water disputes, and are likely to reconfigure power relations in ways to counter hegemonic power exertion (Furlong 2006). Also, the other sources of power discussed in the political ecology of transboundary waters (Chapter 4) can potentially reconfigure the power relation. These insights help us to rethink deploying the Gramscian hegemonic framework in isolation, instead complementing it in potential and via progressive ways by applying Foucauldian notions of dispersed power, as advocated by Ekers and Loftus (2008).

¹⁹⁴ The convention received the quorum needed with Viet Nam's recent ratification, and came into force on 18 August 2014.

6.5. 'Prisoners of history:' Policy implications for interstate water disputes and their resolution

This research offers some useful insights having potential for informing public policy-making for interstate water disputes in India. Considering the increasingly politicized and competitive nature of interstate water-dispute politics between states, it is likely that there will be 'very many disputes,' along the CA's prescient speculation; if not new disputes, the disputes are likely to recur. Keeping in view of all the serious institutional deficit for implementation of tribunal awards and the constitutional and legal ambiguities attached to it (CWDT 2007), the states' compliance will diminish and related grievances will grow. The record of states' compliance with tribunal awards is not encouraging; this is likely to frequently result in states approaching the Supreme Court for redressal. This brings the issue of the Supreme Court's jurisdictional bar to the forefront.

Whether the Supreme Court's jurisdictional bar is absolute or not is an inconclusive debate, and seeks to clarify the anomalies in law, as CWDT (2007) observed. The strong legalist argument is that it cannot be absolute. Fali Nariman, an authoritative voice of constitutional law, insists that "Nobody can bar the jurisdiction of the Supreme Court; it is the final authority for interpreting the constitution itself. Article 136 of the constitution provides for special leave for appeal over the decision of any court or tribunal in India."¹⁹⁵ However, there are others who believe Supreme Court's intervention in interstate water disputes is tantamount to undermining the federal spirit of the constitution (D'Souza 2009, Sankaran 2009). It is true that the Supreme Court is forced to intervene in matters of interstate water disputes using tortuous interpretations of legal responsibilities, primarily to respond to

¹⁹⁵ Personal interview, Fali Nariman, 9 July 2012, New Delhi.

exigencies (Chokkakula 2014). However, these readings also suggest that the Supreme Court has diligently avoided meddling with tribunal awards, and limited its interventions to the extent of clarification of tribunal awards or enforcing the awards. Consider the Supreme Court's engagement with the Krishna dispute in the Original Suits no. 1 and 2 of 1997 between AP and Karnataka. The Supreme Court allowed these suits under Article 131, but upheld Clause 11 of the IRWDA 1956 and restricted its engagement to clarification of tribunal awards and their enforcement.

Keeping in mind the above-discussed changing nature of interstate water disputes and relations, there are two options. The first one is based on the premise that the 'objective rationality' of the Joint Committee on Constitutional Reforms (1934) still holds good, and transboundary disputes cannot be resolved through courts of law. If this is acceptable, the approach of ad-hoc and temporary tribunals for expeditious and final decision making has to continue. However this needs to be supplemented with resolving the anomalies over devising implementation machinery: who and how should it be done? Is it feasible to conceive of such machinery? The record of the RBA 1956 and other interstate machineries does not hold much promise. Yet, even if these barriers are cleared, it would be inadequate. I have argued that it is also necessary to devise institutional spaces and political practices to address the likely recurrences of differences and conflicts in implementation of tribunal awards, and I have suggested that the otherwise defunct, yet constitutionally mandated, body of the Interstate Council is a potential avenue for the purpose (Chokkakula 2014). However, this path is filled with formidable challenges: the litigatory and adversarial proceedings in tribunals will have to be discouraged, with the need to restore the practices of deliberative and discretionary practices for faster and effective decision making. Interstate institutional design is another huge challenge.

The second one is based on the premise that the Supreme Court's engagement in the matters is inescapable. Most lawyers, including senior advocates such as Fali Nariman, Anil Divan, and Uday Holla, encourage accepting this and allowing the Supreme Court's adjudication in these matters. In Fali Nariman's words, "Tribunalization of interstate water disputes is unnecessary; it is a waste of time and efforts... there are courts, expand their capacity to meet the needs of interstate water dispute adjudication"¹⁹⁶ In his proposal to the Punchhi Commission on Centre-States Relations (2010), he has detailed this proposition modeled on the American practices of interstate water disputes resolution. His solution is a simple one, to repeal the IRWDA 1956, effectively making Article 262 redundant and bringing interstate water disputes matters under the Supreme Court's original jurisdiction.

The colonial historical basis for its making warrants a reconsideration of the IRWDA 1956. Instead of holding ourselves prisoners to history, the IRWDA 1956 has to be subjected to comprehensive review. As an accompanying intervention, Article 262 requires an informed reinterpretation while acknowledging the changed nature of federal and interstate relations. Notwithstanding these legal responses, interstate water disputes need effective institutional and political spaces and practices for channelizing the antagonistic politics towards productive and progressive democratic designs.

¹⁹⁶ Personal interview, Fali Nariman, 9 July 2012, New Delhi.

Annexures

Annex A: Sections of Government of India Act 1935 relevant to interstate water dispute resolution

Interference with water supplies

130. If it appears to the Government of any Governor's Province or to the Ruler of any Federated State that the interests of that Province or State, or of any of the inhabitants thereof, in the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State, have been, or are likely to be, affected prejudicially by-

- (a) any executive action or legislation taken or passed, or proposed to be taken or passed; or
- (b) the failure of any authority to exercise any of their powers, with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor-General.

131. (1) If the Governor-General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on, the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he, needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court.

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper:

Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected to any order made under this section by His Majesty in Council or the Governor-General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as hereinafter provided the Governor- General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to, and report from, a Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section:

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor- General shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) The functions of the Governor-General under this section shall be exercised by him in his discretion.

132. If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any natural source of supply in any Governor's Province or Federated State have been or are likely to be affected prejudicially by-

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, he may, if he in his discretion thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General.

133. Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State, or the Governor-General.

134. The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler whereof has declared in his Instrument of Accession that those provisions are not to apply in relation to his State.

Annex B: Articles 239-242 Draft Constitution tracked to GoIA 1935

Interference with water supplies

~~239~~ 130. If it appears to the Government of any ~~Governor's Province or to the Ruler of any Federated State that the interests of that Province or State, State for the time being in Part I or Part III of the First Schedule that the interests of that State~~ or of any of the inhabitants thereof, in the water from any natural source of supply in any ~~Governor's or Chief Commissioner's Province or Federated State, State~~ have been, or are likely to be, affected prejudicially by-

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, the Government ~~or Ruler of the State~~ may complain to the ~~Governor-General~~ President.

~~240~~ 131. (1) If the ~~Governor-General~~ President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on, the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the ~~Governor-General~~ President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the ~~Governor-General~~ President upon consideration of the Commission's report that anything therein contained requires explanation, or that he, needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purposes of assisting a Commission appointed under this article in investigating any matters referred to them, the ~~Federal Court~~ Supreme Court, if requested by the Commission so to do, shall make such orders ~~and issue such letters of request~~ for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court.

(5) The report of the Commission shall include a recommendation as to the Government or persons by whom the expenses of the Commission and any costs incurred by any State or persons in appearing before the Commission are to be paid and as to the amount of any expenses or costs to be so paid; and an order made by the President under this article, in so far as it relates to expenses or costs, may be enforced as if it were an order made by the Supreme Court.

~~(6)~~ (5) After considering any report made to him by the Commission, the ~~Governor-General~~ President shall, subject as herein after provided, make orders in accordance with the report. give such decision and make such order, if any, in the matter of the complaint as he may deem proper:

~~Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper.~~

(7) If upon consideration of the Commission's report the President is of opinion that anything therein contained involves a substantial question of law, he shall refer the question to the Supreme Court under article 119 of this Constitution and on receipt of the opinion of the Supreme Court thereon shall, unless the Supreme Court has agreed with the Commission's report, return the report to the Commission together with the opinion and the Commission shall thereupon make such modifications in the report as may be necessary to bring it in accord with such opinion and present the report as so modified to the President.

(8) ~~(6)~~ Effect shall be given, in any ~~Province or State~~ State affected, to any order made under this ~~section by His Majesty in Council or the Governor-General~~ article by the President, and any Act of a ~~Provincial Legislature or of a State~~ the Legislature of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(9) ~~(7)~~ Subject as hereinafter provided the ~~Governor-General,~~ The President, on application made to him by the Government of ~~any Province, or the Ruler of any State~~ any State affected, may at any time, ~~if after a reference to, and report from,~~ if a Commission appointed as aforesaid ~~he considers it proper so to do so recommend,~~ vary any ~~decision or order given or~~ made under this ~~section~~ article. :

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the ~~Governor-General~~ shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) ~~An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.~~

(9) The functions of the Governor-General under this section shall be exercised by him in his discretion.

241 ~~132~~. If it appears to the ~~Governor-General~~ President that the interests of any ~~Chief Commissioner's Province~~ State for the time being specified in Part II of the First Schedule, or of any of the inhabitants of such a ~~Province~~ State, in the water from any natural source of supply in any ~~Governor's Province or Federated State~~ State for the time being specified in Part I or Part III of the First Schedule have been or are likely to be affected prejudicially by-

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, he may, if he ~~in his discretion~~ thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding ~~section~~ article and thereupon those provisions shall apply as if the ~~Chief Commissioner's Province~~ State for the time being specified in Part II of the First Schedule -were a ~~Governor's Province~~ State for the time being specified in Part I of that Schedule and as if a complaint with respect to the matter had been made by the Government of that ~~Province~~ State to the ~~Governor-General~~ President.

242 ~~133~~. Notwithstanding anything in this ~~Act~~ Constitution, neither the ~~Federal Court~~ Supreme Court nor any other court shall have jurisdiction to entertain any action or suit in respect of ~~any that~~ matter if action in respect of that matter might have been taken under any

of the three last preceding ~~sections- articles~~ by the Government of a ~~Province, the Ruler of a State~~ State, or the ~~Governor General~~ President.

~~134. The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler w hereof has declared in his Instrument of Accession that those provisions are not to apply in relation to his State.~~

Annex C: Interstate River Waters Disputes Act 1956

INTER-STATE RIVER WATER DISPUTES ACT, 1956

Act 33 of 1956¹

(As modified up to 6th August, 2002)

An Act to provide for the adjudication of disputes relating to waters of inter-State rivers and river valleys.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:

1. Short Title and Extent

(1)²This Act may be called the Inter- State Water Disputes Act, 1956.

(2) It extends to the whole of India.

2. Definitions

In this Act, unless the context otherwise requires ,-

- (a) “prescribed” means prescribed by rules made under this Act;
- (b) “Tribunal” means a Water Disputes Tribunal constituted under section 4;
- (c) “water dispute” means any dispute or difference between two or more State Governments with respect to-
 - i. the use, distribution or control of the waters of, or in, any inter-State river or river valley; or
 - ii. the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or
 - iii. the levy of any water rate in contravention of the prohibition contained in section 7.

3. Complaints by State Governments as to water disputes

If it appears to the Government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or of any of the inhabitants thereof, in the waters of an inter-State river or river valley have been, or are likely to be, affected prejudicially by-

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

- (b) the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters; or
- (c) the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters; the State Government may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication.

4. Constitution of Tribunal

- 1) ³ When any request under section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, within a period not exceeding 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:

Provided that any dispute settled by a Tribunal before the commencement of Inter-State Water Disputes (Amendment) Act, 2002 shall not be re-opened;

- 2) ⁴ The 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.
- 3) ⁵ The Central Government may, in consultation with the Tribunal, appoint two or more persons as assessors to advise the Tribunal in the proceedings before it.

5. Adjudication of water disputes

- 1) When a Tribunal has been constituted under section 4, the Central Government shall, subject to the prohibition contained in section 8, refer the water dispute and any matter appearing to be connected with, or relevant to, the water dispute to the Tribunal for adjudication.
- 2) ⁶ The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it within a period of three years:

Provided that if the decision cannot be given for unavoidable reason, within a period of three years, the Central Government may extend the period for a further period not exceeding two years.

- 3) ⁷ If, upon consideration of the decision of the Tribunal, the Central Government or any State Government is of opinion that anything therein contained requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, the Central Government or the State Government, as the case may be, within three months from the date of the decision, again refer the matter to the Tribunal for further consideration, and on such reference, the Tribunal may forward to the Central Government a further

report within one year from the date of such reference giving such explanation or guidance as it deems fit and in such a case, the decision of the Tribunal shall be deemed to be modified accordingly:

Provided that the period of one year within which the Tribunal may forward its report to the Central Government may be extended by the Central Government, for such further period as it considers necessary.

- 4) ⁸ If the members of the Tribunal differ in opinion on any point, the point shall be decided according to the opinion of the majority.

⁹**5A. Filling of Vacancies**

If, for any reason a vacancy (other than a temporary absence) occurs in the office of the Chairman or any other member of a Tribunal, such vacancy shall be filled by a person to be nominated in this behalf by the Chief Justice of India in accordance with the provisions of sub-section (2) of section 4, and the investigation of the matter referred to the Tribunal may be continued by the Tribunal after the vacancy is filled and from the stage at which the vacancy occurred.

6. Publication of decision of Tribunal

- 1) The Central Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them.
- 2) ¹⁰ The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court.

¹¹**6A. Power to make schemes to implement decisions of tribunal**

- 1) Without prejudice to the provisions of section 6, the Central Government may, by notification in the Official Gazette, frame a scheme or schemes whereby provision may be made for all matters necessary to give effect to the decision of a Tribunal.
- 2) A scheme framed under sub-section (1) may provide for-
 - (a) the establishment of any authority (whether described as such or as a committee or other body) for the implementation of the decision or directions of the Tribunal;
 - (b) the composition, jurisdiction, powers and functions of the authority, term of office in other conditions of service of, the procedure to be follow-by, and the manner of filling vacancies among, the members of the authority;
 - (c) the holding of a minimum number of meetings of the authority every year, the quorum for such meetings and the procedure thereat;

- (d) the appointment of any standing, ad hoc or other committees by the authority;
 - (e) the employment of a Secretary and other staff by the authority, the pay and allowances and other conditions of service of such staff;
 - (f) the constitution of a fund by the authority, the amounts that may be credited to such fund and the expenses to which the fund may be applied;
 - (g) the form and the manner in which the accounts shall be kept by the authority;
 - (h) the submission of an annual report by the authority of its activities;
 - (i) the decisions of the authority which shall be subject to review;
 - (j) the constitution of a committee for making such review and procedure to be followed by such committee; and
 - (k) any other matter which may be necessary or proper for the effective implementation of the decision or directions of the Tribunal.
- 3) In making provision in any scheme framed under sub-section (1) for the establishment of an authority for giving effect to the decision of a Tribunal; the Central Government may, having regard to the nature of the jurisdiction, powers and functions required to be vested in such authority in accordance with such decision and all other relevant circumstances, declare in the said scheme that such authority shall, under the name specified in the said scheme, have capacity to acquire, hold and dispose of property, enter into contracts, sue and be sued and do all acts as may be necessary for the proper exercise and discharge of its jurisdiction, powers and functions.
- 4) A scheme may empower the authority to make, with the previous approval of the Central Government, regulation for giving effect to the purposes of the scheme.
- 5) The Central Government may, by notification in the Official Gazette, add to, amend, or vary, any scheme framed under sub-section (1).
- 6) Every scheme framed under this section shall have effect notwithstanding anything contained in any law for the time being in force (other than this Act) or any instrument having effect by virtue of any law other than this Act.
- 7) Every scheme and every regulation made under a scheme shall be laid as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or the regulation or both Houses agree that the scheme or the regulation should not be made, the scheme or the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however,

that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme or regulation.

7. Prohibition of levy of seigniorage, etc.

- 1) No State Government shall, by reason only of the fact that any works for the conservation, regulation or utilisation of water resources of an inter-State river have been constructed within the limits of the State, impose, or authorise the imposition of, any seigniorage or additional rate or fee (by whatever name called) in respect of the use of such water by any other State or the inhabitants thereof.
- 2) Any dispute or difference between two or more State Governments with respect to the levy of any water rate in contravention of the prohibition contained in sub-section (1) shall be deemed to be a water dispute.

8. Bar of reference of certain disputes to Tribunal

Notwithstanding anything contained in section 3 or section 5, no reference shall be made to a Tribunal of any dispute that may arise regarding any matter which may be referred to arbitration under the River Boards Act,¹² [1956].

9. Powers of Tribunal

- 1) The Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely :-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents and material objects;
 - ¹³ (ba.) requisitioning of any data, as may be required by it.
 - (c) issuing commissions for the examination of witnesses or for local investigation;
 - (d) any other matter which may be prescribed.
- 2) The Tribunal may require any State Government to carry out, or permit to be carried out, such surveys and investigation as may be considered necessary for the adjudication of any water dispute pending before it.
- 3) A decision of the Tribunal may contain directions as to the Government by which the expenses of the Tribunal and any costs incurred by any State Government in appearing before the Tribunal are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Supreme Court.

- 4) ¹⁴ [Subject to the provisions of this Act and any rules that may be made hereunder] the Tribunal may, by order, regulate its practice and procedure.

¹⁵ **9A. Maintenance of data bank and information**

- 1) The Central Government shall maintain a data bank and information system at the national level for each river basin which shall include data regarding water resources, land, agriculture, and matters relating thereto, as the Central Government may prescribe from time to time. The State Government shall supply the data to the Central Government or to an agency appointed by the Central Government for the purpose, as and when required.
- 2) The Central Government shall have powers to verify the data supplied by the State Government, and appoint any person or persons for the purpose and take such measures as it may consider necessary. The person or persons so appointed shall have the powers to summon such records and information from the concerned State Government as are considered necessary to discharge their functions under this section.

10. Allowances or fees for chairman and other members of Tribunal and assessors

¹⁶ [The Chairman and other members of a Tribunal] and the assessors shall be entitled to receive such remuneration, allowances or fees as may be prescribed.

11. Bar of jurisdiction of Supreme Court and other courts

Notwithstanding anything contained in any other law, 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 this Act.

12. Dissolution of Tribunal

The Central Government shall dissolve the Tribunal after it has forwarded its report and as soon as the Central Government is satisfied that no further reference to the Tribunal in the matter would be necessary.

13. Power to make rules

- 1) The Central Government, after consultation with the State Governments, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
- 2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely;-
 - (a) the form and manner in which a complaint as to any water dispute may be made by any State Government;

- (b) the matters in respect of which a Tribunal may be vested with the powers of a civil court;
 - (c) the procedure to be followed by a Tribunal under this Act;
 - (d) the remuneration, allowances or fees payable to ¹⁷ [the Chairman and other members] of a Tribunal and assessors;
 - (e) ¹⁸ the terms and conditions of service of officers and assessors of the Tribunal;
 - (f) any other matter which has to be, or may be, prescribed.
- 3) ¹⁹ Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, ²⁰ [which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

14. ²¹ Constitution of Ravi and Beas Waters Tribunal

- 1) Notwithstanding anything contained in the foregoing provisions or this Act, the Central Government may, by notification in the Official Gazette constitute a Tribunal under this Act, to be known as the Ravi and Beas Waters Tribunal for the verification and adjudication of the matters referred to in paragraphs 9.1 and 9.2 respectively, of the Punjab Settlement.
- 2) When a Tribunal has been constituted under sub-section (1), the provisions of subsection (2) and (3) of section 4, sub-sections (2), (3) and (4) of section 5 and sections 5A to 13 (both inclusive) of this Act relating to the constitution, jurisdiction, powers, authority and bar of jurisdiction shall so far as may be, but subject to subsection (3) hereof, apply to the constitution, jurisdiction, powers, authority and bar of jurisdiction in relation to the Tribunal constituted under sub-section (1).
- 3) When a Tribunal has been constituted under sub-section (1), the Central Government alone may suo moto or at the request of the concerned state government refer the matters specified in paragraphs 9.1 and 9.2 of the Punjab Settlement to such Tribunal.

Explanation: For the purpose of this section, "Punjab Settlement" means the Memorandum of Settlement signed at New Delhi on the 24th day of July, 1985.

Notes

- ¹Extended to Dadra and Nagar Haveli by Regulation 6 of 1963, section 2 and Schedule I and to Pondicherry by Regulation 7 of 1963, section 3 Schedule I.
- ²Substituted by Act 14 of 2002, section 2 for insertion of word —`River` (with effect from 06.08.2002).
- ³Substituted by Act 14 of 2002, section 3(a) (with effect from 06.08.2002).
- ⁴Substituted by Act 35 of 1968, section 2, for the previous sub-section.
- ⁵Substituted by Act 14 of 2002, section 3(b) (with effect from 06.08.2002).
- ⁶Substituted by Act 14 of 2002, section 4 (with effect from 06.08.2002).
- ⁷Substituted by Act 14 of 2002, section 4 (with effect from 06.08.2002).
- ⁸Inserted by Act 35 of 1968, section 3.
- ⁹Inserted by Act 35 of 1968, section 4.
- ¹⁰Inserted by Act 14 of 2002, section 5 (with effect from 06.08.2002).
- ¹¹Inserted by Act 45 of 1980, section 2 (with effect from 27.8.1980)
- ¹²Substituted by Act 36 of 1957, section 3 and schedule II, for " 1955".
- ¹³Inserted by Act 14 of 2002, section 6 (with effect from 06.08.2002).
- ¹⁴Substituted by Act 35 of 1968, section 5, for certain words.
- ¹⁵Inserted by Act 18 of 2002, section 7 (with effect from 06.08.2002).
- ¹⁶Substituted by Act 35 of 1968, section 6, for certain words.
- ¹⁷Substituted by section 7, by Act 35 of 1968, for "the presiding Officer".
- ¹⁸Substituted by Act 14 of 2002, section 8 for insertion of word-`Assessors` (with effect from 06.08.2002).
- ¹⁹Substituted by section 7, by Act 35 of 1968, for the former sub-section.
- ²⁰Substituted by Act 45 of 1980, section 3, for certain words (with effect from 27.8.1980).
- ²¹Inserted by Inter-State Water Disputes (Amendment Act), 1986.

Annex D: Amendments to the Interstate River Water Disputes Act 1956

Year	Legislation number of the year	Key issue
1956	Act 33	Original Act
1957	Act 36	Barring reference to matters under River Boards Act
1963	Regulation 6 and 7	Extended to Dadra and Nagar Haveli, Pondicherry
1968	Act 35	<ul style="list-style-type: none"> • Tribunal composition changed from one member to three members • Majority members' decision will be final if there is difference in opinion. • Procedures regarding vacancy filling of tribunal members • Tribunal is free to regulate its practice and procedure • Remunerations to tribunal members and assessors • 'Presiding officer' replaced with 'Chairman' • Rules regarding laying down before the rules made for functioning of tribunal before the parliament
1980	Act 45	<ul style="list-style-type: none"> • Provisions regarding framing schemes to implement decisions of the tribunal by the central government • Rules regarding laying down before the rules made for functioning of tribunal before the parliament
1986	Interstate water disputes (amendment) act 1986	<ul style="list-style-type: none"> • Inserting a section for constituting the Ravi and Beas Water Tribunal for adjudication of matters in Punjab Settlement
2002	Act 14	<ul style="list-style-type: none"> • Term 'River' inserted in the title • Fixing one year term to refer to the tribunal after receiving complaint from a State • Central government may appoint two or more assessors in consultation with the tribunal • Time period of three years for giving award with possible extension for an year • Central government or State government(s) can ask for clarifications from Tribunal regarding its award, within three months. Tribunal is given one year for review and response, may be extended by Central government. • Decision of the tribunal shall have the some force as Supreme Court's decree. • Empower tribunal for seeking data • Inclusion of assessors under Central government's power to make rules for functioning of tribunal
	Act 18	<ul style="list-style-type: none"> • Maintenance of databank by Central government

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