

Minutes of First meeting of the Group on legal aspects under Task Force for Interlinking of Rivers held on 19.08.2016 in the Committee Room of CWC at 3rd floor, Sewa Bhawan, R.K. Puram, New Delhi

First meeting of the Group on Legal Aspects under Task Force for Interlinking of Rivers was held on 19.08.2016 at 04.00 PM in the Committee Room of CWC, Sewa Bhawan, R.K. Puram, New Delhi. The meeting was convened by Shri A.B. Pandya, Former Chairman, CWC and Member Convenor of the Group. He welcomed all the Members, Invitees and other participants. List of participants is enclosed as Annex-I.

(1) Background:

Shri A.D. Mohile, Former Chairman, CWC and Member of the Group requested the Director General, NWDA to briefly explain the background in which this Group was constituted. DG, NWDA informed that during 4th meeting of the Task Force held on 15th June, 2016 while discussing the TAC Guidelines for preparation of Water Balance Study Reports of a river basin and working out surplus water in a river basin and the legal issues, it was decided to constitute a group to look into the legal aspects involved in interlinking of rivers, issue of surplus water in river basin and various Tribunal Awards on inter basin water transfer etc. Accordingly, a Group was constituted to look into legal aspects and required enabling provisions for implementation of Interlinking of Rivers and other related issues.

The Terms of reference of the constituted Group are:

- (i) To look into legal aspects and suggest required enabling provisions for implementation of Interlinking of Rivers,
- (ii) To look into surplus water in a river basin in all its dimensions and suggest various implementable alternatives,
- (iii) To study Awards of the Tribunals and their impact on the planning of Inter Basin Water Transfers or otherwise, and
- (iv) Any other matter relevant to the above aspects.

DG, NWDA further informed that the following documents were circulated alongwith notice of the first meeting to have fruitful discussion by the Group in the meeting:

- (i) Doabia Committee Report to study the activities that are required for optimal development of a river basin and changes required in the existing River Boards Act, 1956 for achievement of the same.
- (ii) Chapter on “Legal and Institutional Framework” of Report of The National Commission for Integrated Water Resources Development Plan.

(2) Gist of Discussion:

i) Shri A.D. Mohile, Member of the Group enquired from DG, NWDA whether any detailed note on the legal aspect of Interlinking of Rivers was prepared. DG, NWDA clarified that a detailed note on seeking legal intervention for implementation of ILR programme was prepared earlier as per direction of the Chairman, Task Force and he had handed over a copy of the same to Shri Mohile. At that time there was a thinking to get this issue examined through Gujarat National Law University. Later, this issue was deferred. He opined that the existing constitutional provisions relating to water were not sufficient for implementation of interlinking of rivers and, therefore, the issue should be referred to Hon'ble Supreme Court for giving directions on it. Shri Mohile was of the view that intervention of Hon'ble Supreme Court at this stage may not be necessary unless the issue on which intervention required was firmed up.

ii) Shri Gopalakrishnan, Member of the Group stated that the 'surplus water' worked out by NWDA as per the TAC Guidelines came under question when Representative of Telengana raised this issue during deliberations in the meetings of SCILR. Accordingly, the matter was referred to the Task Force to give its recommendations on 'Surplus Water'. The Task Force on ILR discussed the issue with the Representatives of the States invited in the meeting and requested Chairman, CWC to convene the meeting of the TAC of NWDA to discuss the guidelines with the representatives of State Governments and modify the Guidelines keeping in view their comments. Based on the recommendations of the TAC in its 42nd meeting held on 23.5.2016, the guidelines for preparation of the water balance study by NWDA which also included working out surplus water were modified and circulated. However, Telengana was still not satisfied and desired that Basins covered under Tribunal Awards should be dealt on different footing with States which are not covered under Tribunal Awards. Shri Gopalakrishnan was of the view that the Group should make use of Doabia Committee Report which was the latest one and submitted to the Ministry of Water Resources in November, 2012 to resolve stalemate of NWDA on interlinking of rivers. He told that Doabia Committee had urged the Central Government to take bold steps in water sector by bringing modified River Boards Act and effective Institutional Mechanism to deal with water related issues. On a query from Shri Mohile whether Doabia Committee Report covered inter-basin water transfer and the issue of surplus water, Shri Gopalakrishnan replied in affirmative. He told that the issue of surplus water was indirectly covered in the Report.

iii) Shri Mohile stated that 'Surplus' was a relative term. Water of a particular river basin could be surplus for one party while it could not be surplus for other. He cited example of Amazon river, which was larger than Ganga-Brahmputra river basin of India. Prima facie, it appeared to be huge quantity of surplus water in the basin but when the question of inter-basin transfer came, some of the States did not agree over the surplus water and did not allow transfer of water. So, he was of the view that enacting legislation for ILR may not be an easy task in federal country like India. He mentioned that he had written two papers on related topics for CBIP session to be held on September 22-23, 2016. He would try to get copies of these two papers for Members of the Group.

iv) Prof. Avdhesh Pratap, Chaudhary Charan Singh University, Meerut stated that Water Sharing Disputes persisted all over globe and Water Jurisprudence had been developed to resolve disputes at international level. Theories had been evolved to resolve inter-state and trans-national river water disputes. Two main theories were appropriate in Indian perspective: (i) The theory of *Community of interest*, and (ii) The theory of *equitable utilization*. For detailed note about these theories, he would submit literature in the next meeting.

v) Shri Pandya cited example of the GST Bill in India and mentioned that even if ILR Bill was enacted, its implementation would not be easy unless proper authority was given to Central Government.

vi) Shri Gopalakrishnan made a Power Point presentation on the Proposed Institutional and Legislative Reforms and the draft River Basin Management Act, 2012 (with contemplated revision), based on Doabia Committee Report. A copy of the presentation is enclosed as Annexure-II.

vii) Shri Virag Gupta, Constitutional & Environmental Law Expert stated that law was very clear. However, for interlinking of rivers, constitutional amendment was required on the plea that country had enormous benefits of irrigation, hydropower, drinking water and industrial water usages and navigation, flood control, etc from ILR Programme. As regards 'Surplus water', he mentioned that if river was flowing within a State, it may be surplus but if it was flowing in two States, it may be surplus in one State and may not be surplus in other State. Similarly, in a particular river, water may be surplus in the month of July but it may be deficit in the month of May. So it was not easy to define 'Surplus water'. While referring to Shri Mohile's papers dealing with legal aspects, he mentioned that whatever material on the issue was available, the same may be circulated amongst the Members of the Group for their reference and fruitful discussion in the next meeting.

viii) Shri Virag Gupta further stated that Entry 56 of List-I should be processed for following two amendments:

1. ILR should be done as: (i) it would provide 35 million hectares of additional irrigation over and above the presently identified Ultimate Irrigation Potential, (ii) it would generate 35,000 MW of hydropower and (iii) it would moderate flood of high magnitude and so on.
2. There should be nationalization of rivers.

ix) Shri Pandya discussed the applicability of the provisions in law and said that the State should have capability to implement the law.

x) Shri Virag Gupta, while commenting on the PIL relating to 'Networking of Rivers', stated that nationalization of river was the main part of PIL. However, Hon'ble Supreme Court felt that the Parliament should enact a law to this effect and that is why no order was given by the court in this regard.

xi) Shri Gopalakrishnan mentioned that White Paper in the form of general concept paper (about 3-4 pages) on Doabia Committee Report was presented in the

Parliament in 2013 by Shri Harish Rawat, the then Hon'ble Minister (Water Resources).

xii) Shri R.K. Jain, Chief Engineer (BPMO), CWC suggested that if water was to be transferred from one State to the other, the donor State must be monetarily compensated suitably to avoid resistance from the other State(s).

xiii) Shri Pandya was of the view that ILR Act should come first, because if River Basin Act came first, it would push ILR program on back foot.

xiv) Shri Mohile felt that National Policy for Allocation of Water should be framed in which apart from co-basin States, Union Government should also be made party to take care of environmental & navigational needs. It should also be decided to what extent demands of non-basin States should be considered.

(3) Gist of important Action Points:

1. Existing Legal provisions should be listed at one place and circulated before the next meeting.

Action: Shri K.P. Gupta, SE

2. Papers of Shri A.D. Mohile for proposed CBIP session and that of Shri Avdhesh Pratap should be circulated.

Action: Shri K.P. Gupta, SE

3. Information regarding Draft National Policy Guidelines for Allocation of Inter-State River Water amongst States (1998) prepared by National Water Board should be obtained from NWP Dte of CWC.

Action: Shri M.S. Agrawal, Sr. Consultant

4. Gist of Supreme Court Judgments should be prepared.

Action: Shri M.S. Agrawal, Sr. Consultant

5. The quantum of work and complexity of the issues involved in the subject matter before the Group required sufficient time to deliberate and come out with the proper recommendations. Therefore, the Task Force for ILR may be approached for extension of tenure of the Group on Legal Aspects by another four months.

Action: Shri K.P. Gupta, SE

The meeting ended with a vote of thanks to the Chair.

Annex-I

List of Participants

First meeting of the “Group on legal aspects under Task Force for Interlinking of Rivers” held on 19th August, 2016 at Sewa Bhawan, R.K. Puram, New Delhi

1.	Shri A.D. Mohile, Former Chairman, CWC	Member
2.	Shri M. Gopalakrishnan, Former Member, CWC	Member
3.	Shri Virag Gupta, Constitutional & Environment Law Expert	Member
4.	Prof. Avdhesh Pratap, Water Law and Management Expert	Member
5.	Shri A.B. Pandya, Former Chairman, CWC	Member-Convener
	Special Invitee	
6.	Shri R.K. Jain Chief Engineer (IMO), CWC	
7.	Shri B.P. Pandey Director (ISM), CWC	
	Officers from NWDA	
8.	Shri S. Masood Husain, DG, NWDA	
9.	Shri R.K. Jain Chief Engineer (HQ)	
8.	Shri K.P. Gupta Superintending Engineer	
9.	Shri M.S. Agrawal Senior Consultant	
10.	Shri M.K. Sinha Senior Consultant	