The Inter-State River Water Disputes (Amendment) Bill, 2019

Background

- The Interstate River Water Disputes Act, 1956 (IRWD) was enacted under Article 262 of Constitution of India to resolve the water disputes that would arise in the use, control and distribution of interstate rivers
- IRWD Act validates the previous agreements among the basin states to harness water of an interstate river. This act is confined to states of India and not applicable to union territories.
- This IRWD Act 1956 has undergone amendments in the year 2002 based on the Sarkaria Commission report on Inter-State River Water Disputes.
- The Inter-State Water Disputes Act 2002 does not permit altering the prevailing tribunal verdicts issued before the year 2002

Key provisions

- Two-tier resolution mechanism: The Bill provides for a two-tier dispute resolution mechanism.
- Disputes Resolution Committee: Once a dispute arises, it would be referred to a DRC to be headed by a secretary-level officer of the central government with experts from relevant fields
- If the committee fails, then the dispute will go to a centralised (single standing) tribunal with multiple benches - instead of the multiple tribunals that exist now.
- Tribunal decision would be final, binding on states and have the same force as an order of the Supreme Court
- Composition of the Tribunal would have a chairperson, a vice-chairman and six members - three judicial and three experts.
- Appointment by the central government on the recommendation of a selection committee, comprising of the Prime Minister, Chief Justice of India and ministers for law and justice and Jal Shakti.
- Retirement: The term of office of the chairperson and vice-chairperson would be five years or until the age of 70 years.
- Time limit: The maximum time allowed for the DRC would be one-and-half years, for the tribunal three years and for reconsideration another one-and-half years - taking the total to six years.
- Basin wise data: Transparent data collection system at the national level for each river basin, the lack of which has been felt for a long time
- Will ensure the transfer of all existing water disputes to the new tribunal

Positive aspects

- The amendment is bringing a time limit for adjudicating the disputes. All disputes would now have to be resolved within a maximum of four-and-a-half years.
- The replacement of five existing tribunals with a permanent tribunal is likely to result in a 25 per cent reduction in staff strength and saving of Rs 4.27 crores per year.
- Tribunal will help set a base for international discussions
- Address the issue of irregular sittings, upper age limit for tribunal chairperson, mechanism for filling vacancy and time limit for publishing report
- Present a robust institutional architecture for disputes resolution.

Implementation challenge

- Procedural complexities involving multiple stakeholders across governments and agencies
- India's federal polity and its colonial legacy set the stage for the third problem of non-compliance.

Conclusion

- De-politicisation of water and irrigation should be the goal.
- Restructuring the central water institutions and creating an autonomous institutional framework
- Establishment of an Inter-State River Basin Commission with a comprehensive mandate for development and management of our water resources

Introduction

- This bill is designed to speed up the resolution of long-festering inter-state water disputes by establishing a single central tribunal in place of the numerous existing ones
- The amendments address drawbacks of the existing Inter-State River Water Disputes Act of 1956.
- The main purpose of the bill is to make the process of dispute settlement more efficient and effective.

Constitutional Basis

- Article 262: 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
- State and Union list: River waters use / harnessing are included in states jurisdiction comes under entry 17 of state list, Schedule 7 of Indian Constitution
- Making laws on regulation and development of inter-State rivers and river valleys when expedient in the public interest comes under entry 56 of union list, Schedule 7 of Indian Constitution.
- Article 263: President may also establish an interstate council as per Article 263 to inquire and recommend on the dispute that has arisen between the states of India.

Need for New Act

- Protracted proceedings and extreme delays in dispute resolution
- The multiplicity of tribunals has led to an increase in bureaucracy, delays, duplication of work and high expenditure
- Rising cases of inter-state water disputes: Due to an increase in demand for more water by states
- No strict time limit for adjudication as the central government kept extending tenure of the tribunals indefinitely.
- No limit for publishing the report of tribunal
- Opacity in the institutional framework and guidelines that define these proceedings
- No upper limit for retirement of the chairperson or other members
- Delays in filling vacancy
- Absence of data on river basins

Criticisms

- Before instituting, a single tribunal government must have a process to "present a robust institutional architecture
- Issues of significant changes on water flow and relation between groundwater and surface water need to be included.
- The current allocation of surface water based on "dependable flow" concept is fundamentally flawed
- Fear of centralisation of power and impartiality
- Appointed by the central government can hurt the federal structure of the country.
- Government's decision to outsource it to an external agency could raise questions over its "reliability".

Way forward

- Sarkaria Commission report and 2nd ARC recommendation on Inter-state water dispute resolution should be adopted in letter and spirit
- Council constituted on the lines of GST Council to strengthen centre-state relations and inter-state relations
- Shifting water from the State List to the Concurrent List of the Constitution
- Measures must be taken to ensure a contingency on availability of water to address climate change adaptability