Testing waters

Last week, the Supreme Court directed the Centre to constitute a tribunal within a month to adjudicate the Mahanadi river water dispute between Odisha and Chhattisgarh. The Centre had resisted constituting a tribunal, instead advocating a political resolution through talks. During the recent winter session of Parliament, the Union Road Transport Minister Nitin Gadkari had even asked Odisha to engage with Chhattisgarh through his or the Prime Minister's office. Odisha, however, insisted on a legal route. Why was the Centre unsuccessful in getting Odisha to the table? It is time we invest in right, credible and institutionalised practices for enabling inter-State mediation, coordination and cooperation.

Political rationalities

To be clear, there is little doubt about substantive reasons for contention over the Mahanadi between Odisha and Chhattisgarh. The States' escalation of the dispute for pursuing their respective interests is legitimate. However, the underlying political rationalities of actors present a typical paradox of multi-party federal democracies that produce the stalemate. This is for two reasons.

Ruckus in Odisha Assembly over Mahanadi, farmers' issues

The first is the political opportunism in federal democracies. The parties in power in both States — the Bharatiya Janata Party (BJP) in Chhattisgarh and the Biju Janata Dal (BJD) in Odisha — will be fighting tough elections in 2018 and 2019. As both have been in power for long, they will have to survive anti-incumbency. Both need fresh grounds for political mobilisation, and the Mahanadi dispute is an enticing opportunity. The governments cannot afford to be seen as compromising their respective States' interests in resolving the dispute. On the other hand, parties in opposition find it rewarding to accuse the governments of compromising the States' interests.

The second is the political subjectivity of the contemporary Indian state. The mechanism of the Centre's mediation before constituting a tribunal for adjudication — prescribed by the current Inter-State River Water Disputes Act, 1956 — is outdated. This was conceived when a single party dominated Indian politics, and the Centre could exercise power and influence over States. The times are different now (though with a different kind of single-party dominance). The Centre-States engagement has turned politically subjective with polarised and assertive regional powers. The BJD is unlikely to trust a BJP-led Central government's initiatives – irrespective of how sincere those efforts might be – with the BJP's own government in Chhattisgarh. The challenge thus is securing credibility of mediation practices — of institutionalising neutrality and objectivity.

Inter-State cooperation

Odisha's unwillingness to engage in talks might not necessarily be for political reasons. It can be for the uncertainties associated with the apparent ad hoc framing of the practice of mediation by the Centre. Much of the failure of Mr. Gadkari's efforts may be attributed to this. Inter-State river waters governance is a classic case of collision between Central and State powers. This conundrum of federal governance is not new.

A water umpire

Jenna Bednar recalls a warning by James Madison, considered the father of the U.S. Constitution, way back in 1821: "The Gordian Knot of the Constitution seems to lie in the problem of collision between the federal & State powers… If the knot cannot be untied by the text of the Constitution it

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ought not, certainly, to be cut by any political Alexander." We have to rely on the Constitution to untie the knot, and cannot resort to the Alexander's sword, as the legend goes.

The success or failure of the 'political Alexanders' efforts, as attempted by Mr. Gadkari, would be politically subjective and contingent. They may, more likely, lead to more tribunals. For better outcomes, it is imperative that we look for more credible forms of inter-State engagement. This, however, has not been an explicit strategy in our policy-making. Instead, inter-State cooperation has always been approached from the other direction — by resolving disputes. Here is a telling contrast. The Act of 1956 for resolving disputes has been amended at least a dozen times since its inception. But the River Boards Act, 1956, drafted simultaneously for inter-State collaboration, has not been amended even once since then.

The drive for political resolution suggests a welcome realisation to push the envelope beyond legal routes. But the practices need to be structured within the constitutional realm. For example, the mediation practices may be structured under the Inter-State Council, provided by the Constitution for the exclusive purpose of inter-State coordination. This has to be, however, part of a larger ecosystem for enabling and nurturing inter-State cooperation, which will involve policy reforms (such as revisiting River Boards Act). The ecosystem has to enable not just inter-State dialogue for collaboration, but also other goals of executing agreements and projects for river development, conservation and restoration.

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