

A CRITICAL ANALYSIS OF INTERSTATE RIVER WATER DISPUTES ACT WITH SPECIAL REFERENCE TO CAUVERY ISSUE

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ABSTRACT

This paper manages the contextual analysis of the Cauvery Dispute amongst Karnataka and Tamil Nadu. Among the reasons for stream water debate are challenged property rights, trouble in authorizing such rights, struggle of employments and an absence of ability to bargain. A co-agent result in such cases relies upon a few components: asymmetry of energy in a triadic connection between a government and two riparian states (one upstream and one downstream). Different variables affecting co-task are the degree to which the cases of stream waters can be lifted from those of prompt riparian people groups to those of a whole express; the strength of a manly worldview towards 'subduing' waterway waters utilizing 'hard' ventures instead of 'delicate' and decentralized choices. Based on region level information, the significance of Cauvery to the hydrology, economy, and nation of the two challenging states is analyzed. This examination encourages us to acknowledge why the two riparian state governments have restricted space to move. Simultaneously, the restrictions of the current establishments in tending to the contention wind up clear.

More than 80% of India lies within an interstate river basin. Thus, the resolution of interstate conflicts affects virtually every area of the country and virtually every part of the economy, from irrigation to industrial uses. Even before independence from Great Britain in 1947, the boundaries of India's States (then called "Princely States" or kingdoms) changed regularly. At the time of independence in 1947, India consisted of 11 provinces and 562 Princely States,

of which 147 were vested with some degree of autonomous legal authority. The Constitution of India, which came into force in 1950, consolidated these units into several dozen States.

Keywords: Interstate River Water Dispute, Cauvery, Karnataka, Tamil Nadu, South India

HYPOTHESIS

The Interstate River Water Dispute between Karnataka and Tamil Nadu has not reached an effective conclusion due to institutional failure and problems in the framework, thereby demanding a need to be reexamined.

RESEARCH QUESTION

Whether the comparison of various solutions provided for the Cauvery issue by the Government under the Interstate River Water Dispute Act, proves that an effective conclusion has not been reached yet?

MATERIALS AND METHODS

This paper is a doctrinal research done mainly with the help of secondary sources. These include research papers and textbooks.

INTRODUCTION

The sharing of river waters crosswise over political limits involves strife in numerous nations. India faces countless and in addition inter-state clashes on regular water assets. Inside India, 16 of the 18 noteworthy river bowls cover at least two States. However, 'Water' is listed as a state subject in the constitution of India, the Central Government is engaged to take measures to guarantee incorporated improvement of interstate rivers, build up systems to determine disputes between riparian states, and intervene in the interests of condition assurance. There are additionally a few national enactments, for example, the River Boards Act, the Interstate Water Disputes Act, and those identifying with natural assurance, woods preservation, contamination control, and so forth. The lawful structure comprises of arrangements with respect to the forces of the state in connection to water asset advancement and their appropriation, the nature of and reason for the privileges of various inquirers over basic wellsprings of water, and the standards, systems and strategies for settling disputes. In any case, they have not been powerful in realizing a satisfactory arrangement. A considerable lot of these issues are because of the fact that there are insufficient powerful rules, an

acknowledged arrangement of parameters and pointers to determine clashes in tending to transboundary river water sharing issues. ([Water Balance and Climatic Classifica...](#))

Aim of the Study:

To analyse the Cauvery Water Dispute between Tamil Nadu and Karnataka, discuss the historical, constitutional, political and international perspectives of the problem, understand the steps taken by the government and examine their effectiveness.

HISTORICAL DEVELOPMENT OF THE DISPUTE

The British controlled both Mysore and Madras in the mid-nineteenth century. In the midst of their organization, different plans were drawn up for the utilization of the Kaveri waters by the two states. Nevertheless, the dry season and ensuing starvation in the mid-1870s put a cutoff on the execution of these plans. Nevertheless, when Mysore attempted to revive those plans, a social event was held in 1890 with the objective of agreeing on the guidelines of a modus vivendi, which would from one perspective allow to Mysore in overseeing water framework works, and on the other, accommodate Madras handy security against harm to interests and at last, after generous trades and courses of action for quite a while, the comprehension of 1892 was settled upon. In any case in 1910, both Mysore and Madras planned to create dams in Kannambadi and Mettur separately. The British government by then, enabled Mysore to gather the dam for a lessened storing (11 TMC rather than organized 41.5 TMC), anyway in the midst of the advancement, the foundation was laid to suit the before needed full accumulating, which realized break from Madras. As needs be, the Kaveri banter about was put for mediation all of a sudden. Methodology started on 16 July 1913 and the award was given on 12 May 1914. Everything considered, Madras offer against the award and game plans continued for an extra 10 years. At last a comprehension was met up at in 1924, which was set to sneak past after a continue running of 50 years. Flexibility and the update of states in India realized new enhancements in this issue. In 1956, state limits were redrawn in perspective of semantic economics. These changed the conditions as Kerala and Puducherry moreover jumped into the shred, by ensuring their benefit on one of their tributaries or the major stream to some degree. The agreement similarly achieved an end.

Karnataka acted independently will without thinking about the effect on the work of various states and proceeded to impact Harangi to dam at Kushalagara in Kodagu. Tamil Nadu went

to court asking for the constitution of a Tribunal under the Interstate River Water Disputes Act (ISWD) of 1956. Later Tamil Nadu pulled back its case asking for the constitution of a council and the two states started organizing afresh. A couple of rounds of discourses were held in the 1980s. ([Guhan 1993](#))

The Supreme Court by then guided the lawmaking body to constitute a council and imply all debate to it. A three man council was thusly constituted on 2 June 1990, and following were the solicitations by the concerned four states

- Karnataka – 465 billion ft³
- Kerala – 99.8 billion ft³ (2.83 km³)
- Puducherry – 9.3 billion ft³ (0.3 km³)
- Tamil Nadu – 566 billion ft³ for Tamil Nadu and Puducherry; 177 billion ft³ for Karnataka and 5 billion ft³ for Kerala.

Tamil Nadu asked for a compulsory directive on Karnataka for the incite landing of water and distinctive reliefs. Though at first ousted by the council, on the heading of Supreme Court, it considered TN's ask for and released the break grant on 25 June 1991. They did it by learning the ordinary inflows over a period of 10 years (disregarding the inconsistencies), and it came at a figure of 205 billion ft³ which Karnataka needs to ensure accomplished TN in a water year, to be scattered on a month to month commence. Karnataka, again not content with the demand, issued a statute hoping to nullify the award. The Supreme Court took steps on President's request and struck it down, and it was in this way gazetted by GOI on 11 Dec 1991. Distinctive turmoil ridden situations isolated because of this in the Tamil involved parts of Karnataka.

Regardless, then award, there was no conspicuous condition that everyone settled upon to share the waters by virtue of dissatisfaction of the rainstorm. Likewise, this intensified the condition in 1995-96, when rainstorm tumbled extremely in Karnataka and Karnataka didn't fulfill the interval ask. Finally, P.V.Narsimha Rao interceded and found a political game plan where Karnataka released 6 billion ft³ instead of the 11 that the council asked.

As a result of a couple of occurrences of Karnataka opposing the break council's award, in 1997, the Government proposed the setting up of a Cauvery River Authority which would be

vested with expansive powers to ensure the utilization of the Interim Order. These powers fused the capacity to expect control over the control of dams if there should be an occurrence of the Interim Order not being respected. Karnataka, which had continually kept up that the break ask for had no legitimate preface and was intrinsically deficient, immovably disagreed the suggestion to set up such a specialist.

The Government by then impacted a couple of changes to the powers of the Authority and came to up with another recommendation. The new recommendation massively reduced the official powers of the Authority. The capacity to accept control of dams was also disposed of. Under this new recommendation, the Government set up two new bodies, viz., Cauvery River Authority and Cauvery Monitoring Committee.

Following 16 long periods of hearing and a break ask for, the Tribunal detailed its last demand in 2007 allotting 419 TMC ft water to Tamil Nadu and 270 TMC ft to Karnataka. Kerala was given 30 TMC ft and Puducherry got 7 TMC ft. The Tribunal had touched base at a conclusion that total openness of water in Cauvery bowl stayed at 740 TMC ft. Regardless, both Tamil Nadu and Karnataka recorded a review demand of before the Tribunal.

In 2012, Prime Minister Manmohan Singh, as administrator of Cauvery River Authority, guided the Karnataka government to release 9,000 cusecs of water each day. The Supreme Court pulverized state government as it fail to consent to the demand. The governing body offered a boundless articulation of regret and started the entry of water provoking wide savage difficulties. ([Garg 1999](#))

In any case, the issue kept disquieting the district as Karnataka stopped entry of water again and Tamil Nadu government drove by Chief Minister J Jayalithaa decided to sue the Karnataka government for hate of court. With the Karnataka government unendingly fail to release the water to Tamil Nadu, Chief Minister Jayalitha recorded an interlocutory interest to in the Supreme Court in August, 2016 searching for landing of water as indicated by standards of Cauvery Tribunal. Detailing its choice for the circumstance, the SC has now guided Karnataka government to release 15,000 cusecs of water to its neighboring state for 10 days.

In September 2017, the Supreme Court held its judgment on the interests archived by the states against the CWDT's last award. Tamil Nadu had battled that the court should not leave the inquiry open for Karnataka to adventure and should designate the specialist and edge an arrangement for the assignment of water.

On 16 February 2018, the Hon'ble Supreme Court has enunciated its choice. Reduced 14.75 TMC water bit to Tamil Nadu and now Karnataka to release only 177 TMC of water to Tamil Nadu for next 15 years. The choice also requested to formally constitute the Cauvery stream organization board by the affiliation government inside 40 days for completing altogether the council award and its choice.

CONSTITUTIONAL, INTERNATIONAL AND POLITICAL PERSPECTIVES OF THE PROBLEM

Constitutional perspective

India is a Union of States represented by a Constitution, which, in addition to other things, builds up Parliament as the legislative branch. India comprises of 29 States and seven Union territories. The Government has greater authority over Union territories (previous provincial territories) than it does over States, which keep up a semi-free part in the alliance.

The Constitution of India went into compel in 1950, three years after India accomplished autonomy from Great Britain.

Article 246 of the Constitution of India makes three Lists (classes) of subject issue that fall inside the authority of the Union (the Central Government), or the States, or that are subject to concurrent (double) jurisdiction. The Lists distinguish the subjects on which the Union or the States can enact:

- List I contains those "sections" (particular subjects) that are the selective jurisdiction of the Union. Entry 56 covers the direction and advancement of interstate rivers and river valleys "to the degree to which such control and improvement under the control of the Union is pronounced by Parliament by law to be convenient in general society interest."

- List II contains sections that are the selective jurisdiction of the States. Entry 17 clarifies that everything identified with water, aside from an interstate river, stays under the select

control of States. "Water, in other words, water supplies, water system and trenches, seepage and dikes, water stockpiling and water control, subject to the arrangements of Entry 56 of List I [the Union]" stays inside State authority.

- List III contains sections that shape the "Concurrent List" over which the Union and States have double authority. There is no say of water in this list.

Along these lines, interstate waters stay under Central Government control if Parliament enacts enactment in accordance with Entry 56. Each and every other part of water and river administration stays under State control. In the event that there is a contention between States over the significance of those arrangements, the States may take their debate to the Supreme Court, which has unique jurisdiction to hear cases between States.

For this reason, Parliament enacted two sidekick statutes in 1956. The main statute, River Boards Act, approved production of interstate "river boards" to exhort and help create interstate rivers. In any case, the River Boards Act has stayed torpid. No river boards have been made over the most recent 55 years, an impression of the high level of doubt by States, who expect that the river boards will give the Central Government a lot of impact over State framework, especially water system waterways. ([Iyer 2003](#))

The second statute, Inter-State Water Disputes Act, 1956 enables States to document dissensions with the Central Government and demand the formation of a unique court - a tribunal - to arbitrate water disputes. In the event that the Central Government finishes up the debate can't be settled by transactions, it makes a Water Disputes Tribunal under the Act.

International point of view

Ways to deal with the determination of international river disputes reflect different lawful standards:

I. The rule of absolute sovereignty-where a riparian state may assert that it has absolute rights over a river coursing through its region and that how it utilizes those waters is its household concern and different states have no privilege to intervene or direct. This is prominently known as the Harmon regulation as far as anyone knows in view of the supposition given by

the American Attorney General Hudson Harmon on account of Rio Grande river debate amongst Mexico and the USA in 1895.

ii. The guideline of absolute territorial or riverine integrity-where a (lower) riparian cases that their entitlement to the river's common stream is absolute. Territorial integrity is interpreted as far as verifiable or prescriptive rights or that the utilization of river waters are instrumental to the territorial integrity of the lower riparian and in this manner these are sacred.

iii. A related interpretation is known as the rule of prior appropriation whereby the riparian who has utilized the waters initially can guarantee a right.

iv. The rule of restricted territorial sovereignty implies that the privileges of each riparian state are mutually dependent and not absolute. This requires each riparian state to utilize the river waters without making any damage other riparians' utilization of the waters.

v. The rule of equitable allocation or use is identified with this and in this the river is considered as a typical property and all riparians are relied upon to distribute waters evenhandedly in view of different factors.

vi. The standard of basinwide administration proposes that a river bowl ought to be considered as an administration unit regardless of in the event that it is spread crosswise over at least two countries. The monetary productivity approach for instance is reflected in the view that the principal best portion of river waters is what augments the net present estimation of the social advantages. This is additionally alluded to as the financial approach. It gives the idea that a critical larger part of the interstate river compacts center principally around financial effectiveness. ([Fernandes 2018](#))

In the Cauvery issue, Tamil Nadu secures its directly finished Cauvery by summoning the regulation of appropriation while Karnataka has a tendency to come the Harmon convention, maintaining, 'absolute territorial integrity.' Both perspectives are extraordinary and off-base.

Political point of view

The confusion of determining systems in view of conventional personalities can hurt the economy, nature and people that are not all that intense. Political gatherings utilize this to set their plan for more votes by focusing on character (dialect or religion) and understand to limit

level headedness amid transactions on the river water question. The prevailing methodologies of self-interest and non-collaboration by political gatherings in the two States leaves the debate to be a detainee's problem.

In 1990, the Cauvery Water Disputes Tribunal was set-up to guarantee productive and even handed conveyance of water among the States to achieve any farming, destructive and mechanical necessities. The Tribunal's finishing up judgment of February 2007 reported 30 Thousand Million Cubic Feet (TMCft) of water to Kerala, 270 TMCft to Karnataka, 419 TMCft to Tamil Nadu and 7 TMCft to Puducherry. Be that as it may, the Congress-drove Karnataka did not keep the award. What's more, with the inability to specify the appropriation of water amid a poor precipitation year, Tamil Nadu under AIADMK exacerbated the circumstance. The issue again heightened to a point where the Supreme Court has needed to intervene. Along these lines, today, the water sharing transaction has come down to regulating the system through the making of a Cauvery Management Board (CMB). Here, the Supreme Court has set the ball in the hands of the Center, or the BJP for the present, which as per late news has looked for two more weeks, after decisions in Karnataka.

Without autonomous working boards, there would be broadened cases and threatening inter-State legislative issues. Another significant issue political gatherings are confronting is the water hardship being looked by poor agriculturists and urban inhabitants. States have neglected to understand that water sharing is an absolute necessity under a government setup and one can't play accuse amusements to accomplish political favorable position by amplifying control over this asset. ([Ghosh and Bandyopadhyay 2009](#))

Political gatherings have a convincing contention to build up an avaricious viewpoint and dispose of any agreeable system since this produces a political arousing point that is speaking to different masses. Be that as it may, as water shortage heightens later on and cries of a developing populace become shriller for water, the politicization of Cauvery can soon achieve a limit with serious implications.

CRITICISMS OF VARIOUS SOLUTIONS BY THE GOVERNMENT

The principle contentions are exhibited by each state to the Cauvery Tribunal and these contentions are not in people in general area.

Karnataka

In any case, from the material that is accessible in people in general space, for the most part an arrangement of three volumes distributed by the administration of Karnataka, and from the statements made by state political pioneers and announced in the daily papers, the accompanying five primary focuses can be recognized.

In the first place, Karnataka's claim is that toward the finish of 50 year time frame in 1974, the 1924 understanding completely ought to be esteemed to have terminated. In this manner, claims in view of that affirmation ought not decide allotment of waters today. As per K, the 1924 understanding was set aside a few minutes when Tamil Nadu was under the British control and Karnataka was under Maharaja's organization when Karnataka did not have the opportunity to contend emphatically to advance its interests.

Second, in Karnataka's view, the agriculturists in the upstream territories have as much appropriate to water and develop edits as do ranchers in the downstream regions. Karnataka's claim is that the supposed prescriptive utilization of downstream ranchers is basically in light of the fact that such regions were under the British organization which could utilize its authority and forces to extract a greater number of waters to downstream needs than would regularly be the situation. ([Rao 1998](#))

Thirdly, it is contended that Karnataka is for the most part subject to the South East storm (June- September) which contributes fundamentally to the stream in river Cauvery. Then again, it is contended that while Tamil Nadu is squeezing for claims, Tamil Nadu likewise profits by a lot of rain from the North East rainstorm (October-December). It is, along these lines, recommended that a claim on Cauvery waters disregards this unequal appropriation of precipitation and the subsequent overflow. While Tamil Nadu does not need to share any water from its N-E storm, Karnataka is compelled to share water from the S-E rainstorm with Tamil Nadu and this it is contended is intrinsically unreasonable.

Fourthly, it is contended that a downstream state can't make a claim when there is shortage of water and deficiency in upstream regions. Accordingly, it is contended that Karnataka can release waters to Tamil Nadu just if there is satisfactory amount of water to address with Karnataka's issues. As of late, this has been a critical issue with respect to executing the stream design as stipulated in the interim award of the Tribunal. The legislature of Karnataka

ends up in a troublesome position to discharge waters to Tamil Nadu when its own particular ranchers confront intense water pressure. In 2003, supposedly an agriculturist in Karnataka conferred suicide by falling in the repository. The legislature of Karnataka is therefore pushed into a tight corner whereby actualizing the Tribunal's award as far as streams in summer months is seen by nearby ranchers as denying water to them.

Fifthly, Karnataka's contention has all the earmarks of being that riparian rights should be rethought with the end goal that the offer of water of the rivers is in extent to bowl region and commitment to the river stream.

Tamil Nadu

On account of Tamil Nadu, there is no distributed data from the legislature in the general population space to measure government's position. Based on detailed things in the daily paper media and infrequent statements in the Policy Notes in the State Legislature, the accompanying focuses can be recognized.

As indicated by Tamil Nadu, the 1924 assention is foundational to the advancement of key ventures in both the states and in this way, it can't be changed now as any such change will have huge negative impacts. In Tamil Nadu's view it gives the idea that the arrangement of looking into toward the finish of 50 years identifies with different courses of action to execute the understanding instead of changing the center standards of the assention itself.

Second, the long history of ranchers in Cauvery delta watering and creating rice ought not be denied. As the 1924 assention perceived these prescriptive rights, these should be secured. Ranchers in Karnataka are not denied from utilizing the waters but rather that there is an utmost on the volume of water and zone to be flooded so downstream clients' rights are not risked.

Thirdly, rainstorm highlights are characteristic factors in view of which claims can't be made. These rainstorm designs have existed well before river water sharing assentions came into picture. The principle point is by all accounts that Karnataka is allowed to misuse the S-E storm or different sources inasmuch as the stream of water in Cauvery is ensured with the end goal that the downstream ranchers' prescriptive right isn't contrarily influenced.

Fourthly, Tamil Nadu's contention is by all accounts that an inter-state river is a typical property and not a private property of the upstream state. Henceforth, it can't be contended that after the necessities of one state are met, just abundance waters, assuming any, will be discharged. ([D'Souza](#))

Fifthly, Tamil Nadu appears to perceive that bowl territory, commitment to river stream and different factors can be considered. Be that as it may, this should be connected to dispersion of waters past those expected to meet the prescriptive privileges of downstream agriculturists.

SUGGESTIONS AND RECOMMENDATIONS

The states need to shed the provincial approach as the arrangement lies in participation and coordination, not in strife. The arranging must be done at the bowl level to make the arrangement feasible and naturally suitable. The long due production of Cauvery Management Board and an administrative authority to uphold the tribunal's requests must be done promptly. The arrangement ought to be individuals driven, for example, utilizing 'Cauvery Family'- a gathering shaped by agriculturists of the two states to scatter the billows of threatening vibe.

In the long haul, there is a need to revive the river through afforestation, river connecting and so forth. Second, tidying up of the contamination hotspots must be finished with a stringent keep an eye on the modern contamination. Third, an expanded spotlight is required on expanding water utilize effectiveness viz. miniaturized scale water system, mindfulness in individuals to judiciously utilize water and water keen procedures. Fourth, editing design must change towards millets, jowar and different indigenous harvests which utilize substantially less water and are protein rich.

Mostly, agriculturists of the two states need to take part in multi partner exchange and touch base at an answer. It is their conclusion that at last issues.

CONCLUSION

The examination in this paper recommends that political and institutional factors decide if a river water question emerges and whether it remains a debate. The plan gave by the ISWD Act of 1956 is for the most part a constitutional-legitimate approach. While this is essential,

numerous confinements remain. Along these lines, even while the tribunals consider various factors, the staggering open observation revolves around amount of water and how it is allotted between various riparian states. While the Tribunal's award may settle a portion of the lawful disputes, huge numbers of the underlying drivers of the debate will in any case remain. There is requirement for building up a reasonable aggregate action organization to execute the award of the Tribunal. it is essential to feature the fact that in the constitutional plan of things, fidelity to the constitution implies the award of the tribunal must be acknowledged regardless of whether the award isn't altogether to the enjoying of either parties. Something else, a circumstance of constitutional breakdown can emerge. There is a need to 'de-emotionalise' the issue. The media and non-legislative associations and international associations can assume an imperative part in this regard. The different endeavors to sort out individuals to-individuals exchanges can likewise be valuable.

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