

# Cauvery River dispute – A Study

**Vijay Kumar Hemappa Manegar**

Asst Professor of History  
Govt First Grade College,  
Harapanalli.

## Abstract

The river Cauvery has become a bone of contention between the states, Karnataka and Tamil Nadu leading to protests, violence and shut downs. On one hand, Tamil Nadu is alleging that its farmers are being deprived of water as the volume of water being released by Karnataka is untimely and lesser in volume. On the other hand, there is a hue and cry in Karnataka for being deprived of even drinking water. With the reducing resources of freshwater and rising demand such a scenario is not unimaginable.

The dispute brings to fore an issue which needs imminent attention, for such a scenario may be replicated for other rivers given the impending threat of climate change and practices of unsustainable development. The Cauvery river with its disputable position on water sharing between Tamil nadu and karnataka is the major scenario and concern under this paper. The age old tribunal set up under its constitutional mechanisms which deal with the water disputes and sharing of water reached a unserendipitous result.

The clear view of the dispute can only be brought into limelight through the historical significance of the river and its importance specifically to Tamil nadu and Karnataka among Pondicherry and Kerala. Tamil Nadu and Karnataka have been embroiled in disputes over sharing the Cauvery waters for more than a century. The other two parties to the disputes are Kerala and the Union Territory Of Puducherry. In the past, many attempts had been made to address this issue, but all of these efforts were unsuccessful. The researchers used descriptive methods for this research paper.

A descriptive study is one in which information is collected without changing the environment (ie., nothing is manipulated) it is uses to obtain information concerning the current status of the phenomena to describe “ what exists” with respect to variables or conditions in a situations. The paper analyses the tribunals of the past, Constitutional mechanism existing, court rulings with special reference to the 2018 Judgement the main object of the study is to analyse the professional cum bureaucratic approach to the cauvery water distribution and to calculate the efficiency economy and effectiveness of bureaucratic approach. The question raised by the researchers was whether bureaucratic approach is adequate for distribution of cauvery water ?. the researchers also proved the null hypothesis and the bureaucratic approach which is not existing for peaceful distribution of Cauvery water. Cauvery is the longest south Indian river which originates in Karnataka, flows through Tamil Nadu with major tributaries coming from Kerala and drains into Bay of Bengal through Pondicherry.

*Keywords: Tamil nadu, Karnataka, Management board, bureaucratic, water dispute, Cauvery.*

## Introduction

The Cauvery, or Kaveri River, originates from Talakaveri (Talakaveri) in Kodagu district in Karnataka. It has a drainage area of around 81,155 square kilometres which is spread across four states – Karnataka (34,273 square kilometres) Tamil Nadu (43,867 square kilometres), Kerala (2,866 square kilometres) and Puducherry (149 square kilometres). Its main tributaries are the Harangi, Hemavati, Kabini, Arkavathy, Amravathi, Lakshmana and Tirtha. The river and its tributaries together form the Cauvery river system. There are around 86 dams on the Cauvery River and its tributaries.

Of those dams, 37 have been constructed after 1974. The surplus waters after Upper and Grand Anicuts not required for irrigation are diverted into the Coleroon by means of regulators. Here the Lower Anicut regulates the water into three canals. The river continues (Rao) in a north-easterly direction. It discharges into the Bay of Bengal at a place, a little south of Porto-Novo. Rainfall and Agriculture During the south-west monsoon which starts in July-August, the samba cultivation begins. During the north-east monsoon, kuruvai sown in June-July would have been harvested and, the thaladi would begin. The variation in rainfall could damage the crops on account of the floods in certain years and lack of water in other years. This has been somewhat regulated following the construction of the CauveryMettur Project.

Rainfall has greatly influenced the agricultural operations of the peasants in the Cauvery river basin as elsewhere in India. (Wood) Agriculture has been the principal occupation of the people living near the river bed since the dawn of civilization with paddy as the major crop of cultivation. There is therefore little wonder that rice has been the staple food in South India. There are three seasons for growing paddy in samba, kuruvai and thaladi. Samba is a six month crop. Kuruvai seeds are generally sown in June-July and Thaladi in September-October. Samba cultivation begins in August-September and is harvested in January-February. However, with the modern advances made in agriculture, kuruvai, samba and thaladi have lost all significance. The installation of bore wells has freed at least the enlightened farmers from depending on the vagaries of monsoon. Irrigational Importance of Cauvery River Since the Chola rule Thanjavur has been regarded as the granary of South India because the Cauvery fertilizes the cultivable lands in that area every year with its freshers. (Guhan) .

## Objective:

This paper seeks to study the historical context of Cauvery dispute and present contextual details of the controversy.

## THE RIVER DISPUTE BACKGROUND:

The story of irrigation in Tamil Nadu takes us as far back as (Nair) period of Silappadikaram, the great Tamil epic. It is said that a Chola King, named Kanthaman, seeing his country suffer from drought took steps to bring the Cauvery water to his country. He was probably one of the earliest to have realized the importance of irrigating the lands with the river water. It was also claimed that the Chola kings understood the meaning of the proverb "Raise the ridges, the fields improve; cultivate the fields, kings prosper." This Tamil saying has great many meanings suitable for all times. Agriculture forms the basic and solid foundation of Indian economy. Agriculture without irrigation is beyond imagination. Therefore, right from the early times there have been schemes and methods to harness the waters of the Cauvery and utilize them to the fullest possible extent. It is claimed that the earliest among them was the crowning achievement of Karikala Chola (c. A.D. 50-95). It is stated that he was the first king to harness Cauvery waters purposefully for better use in his kingdom. It is also claimed that

he constructed the Grand Anicut across the Cauvery which was subsequently strengthened by a later Chola ruler Vira Rajendra also called Karikala.

Thus it is clear from the above mentioned historical information that the Chola kings evinced a keen interest in protecting and promoting the irrigation system of the country. The Cholas, irrigation in these areas was badly neglected on account of wars and political changes. The condition remained one of inundation rather than controlled irrigation system. Therefore the irrigation system was subject to the vagaries of the river Cauvery. This sad state of affairs continued until the British rule. After taking over the administration of the Madras Presidency became concerned about the dwindling returns in the land (Binswanger et al.) revenue and attempted to take a few corrective steps to reestablish the satisfactory irrigation condition in order to improve the company's cash resource base. An Irrigation Commission under the Chairmanship of Cohn Scott Moncrieff was appointed in the year 1901. The Commission led a number of projects. The Cauvery-Mettur project was one of them.

## DISPUTE INCEPTION

Tamil Nadu and Karnataka have been embroiled in disputes over sharing the Cauvery waters for more than a century. The other two parties to the disputes are Kerala and the Union Territory Of Puducherry. In the past, many attempts had been made to address this issue, but all of these efforts were unsuccessful. The most recent attempt culminated on 16 February 2018 when the Supreme Court of India delivered its verdict on the issue. In its verdict, taking into account the drinking water situation in Bengaluru city (earlier known as Bangalore), which is not part of the Cauvery basin, the Supreme Court allocated an additional 14.75 thousand million cubic feet of water to Karnataka. Of this, 4.75 thousand million cubic feet are to meet the drinking water demands of Bengaluru city. This induced the Cauvery management board to be instituted<sup>4</sup>. In 1974, the water-sharing agreement of 1924 between Mysore and Madras lapsed. Consequently, their successor States in independent India, Karnataka and Tamil Nadu respectively, found themselves at loggerheads over the Cauvery waters.

To look into the matter, Tamil Nadu wanted a tribunal to be set up under the Inter-State River Water Disputes Act, 1956 (amended in 2002). However, this was ruled out by the Union government (Iyer) After an intervention by then-Prime Minister of India, Indira Gandhi, Tamil Nadu withdrew its demand for a tribunal and started participating in negotiations with the riparian States. During the negotiations, the Union government presented two draft agreements in 1974 and 1976 respectively. Both were rejected by Tamil Nadu (Iyer; Wood). On its part, Karnataka allegedly dragged the negotiations by adopting dilatory tactics such as late responses to issues so that it could gain enough time to build new dams in the upstream region. At that time, a crisis management system was set up for the following 15 years.<sup>5</sup> Under this system, Tamil Nadu annually demanded enough water to save its crops in the delta region, which Karnataka did not agree to initially, citing its own water needs.<sup>6</sup> In 1990, while looking at a petition filed by a group of farmers from Tamil Nadu, the Supreme Court ordered that a tribunal be set up by the Union government to look into the water disputes between Tamil Nadu and Karnataka. Initially, the Union government, under Prime Minister V P Singh was not interested in the issue. However, the Centre eventually appointed a tribunal,<sup>7</sup> headed by a Supreme Court judge, Justice Chittatosh Mookerjee, as the chairman and Justices S D Agarwal and N S Rao as members. In 1996, Justice Mookerjee resigned from the tribunal. Justice N P Singh then assumed chairmanship of the tribunal in 1997.

Presenting their cases before the tribunal, the disputants made the following points in support of their water-related demands:<sup>8</sup> Tamil Nadu “The Central Fact-Finding Commission’s reports of 1972 and 1973 with regard to yield and utilisation should be revised. The average annual utilisation is already higher than the yield, even at 50 per cent availability, and hence there is no scope for savings. The 1892 and 1924 agreements are considered inviolable, binding on all the states. There is thus little to be gained from working out any fresh allocation of waters in terms of the actual amount or periodic releases.” However, Karnataka delayed implementing the interim order sensing public outrage in the State against the decision. Karnataka’s withholding the waters had no impact on Tamil Nadu from 1992 to 1994 because, in those years, the State had good rainfall. However, in 1995, when the monsoon failed, the issue of implementation of the interim order came up.

Following a plea by Tamil Nadu, the Supreme Court ordered Karnataka to release 30 thousand cubic feet of water immediately to save the rice crop in Tamil Nadu. The order was ignored by Karnataka. Consequently, the Supreme Court requested the then Prime Minister, P V Narasimha Rao, to mediate. After consultations with the chief ministers of Karnataka and Tamil Nadu, Rao called for the release of six thousand million cubic feet of water and set up a committee to see to its implementation.

The continuous interference from the Supreme Court, interventions from the prime minister and non-compliance with the orders by Karnataka made the CWDT a toothless body.<sup>22</sup> In 1998, then-Prime Minister, Atal Bihari Vajpayee, convened a meeting, first of the chief secretaries of the three States and the Union Territory in the Cauvery river basin. This was followed by a meeting of the chief ministers from the disputing States. After these meetings, Vajpayee was able to secure an agreement whereby there would be an ad hoc decision each year based on the recommendation of the monitoring committee headed by the Union cabinet secretary.

A Cauvery River Authority was also set up, headed by the prime minister. Meanwhile, the CWDT continued its work and in February 2007 and delivered its final verdict on the dispute. In its order, the Supreme Court had calculated the total availability of water at 740 thousand million cubic feet (measured at Lower Coleroon Anicut site), at 50 per cent dependability. The CWDT allocated 30 thousand million cubic feet to Kerala, 270 thousand million cubic feet to Karnataka, 419 thousand million cubic feet to Tamil Nadu and seven thousand million cubic feet to Puducherry, while 10 thousand million cubic feet was set aside for environmental protection, and four thousand million cubic feet written off as inevitable escapes into the sea.<sup>9</sup> This allocation meant that Karnataka had to release 192 thousand million cubic feet of water to Tamil Nadu.

To implement its decision, the tribunal recommended that a Cauvery Management Board (CMB) be set up by the Union government. The CMB was entrusted with supervision of the operation of reservoirs and regulation of water releases with the assistance of the Cauvery Water Regulation Committee which was to be constituted by the CMB. The CMB was required to submit its annual report to the four disputing parties Karnataka, Tamil Nadu, Kerala and Puducherry before the 30th of September each year.

## THE CONTOURS OF THE RIVER WATER SHARING

India has 2.4% of the World's land, 18% of the world population but only 4% of the renewable water resource. If sufficient steps are not taken, the uneven water distribution will increase the possibility of water conflicts. Inter-state river water disputes hinder the cooperative federalism of our nation and provide parochial mindset making regional issues superior to national issues. One should realise that our nation is a family in which all states are its members. So disputes must be resolved by dialogue and talks and the political opportunism must be avoided. The issue can be resolved by discussing the dispute in Inter-State Council which can be beneficial in providing a platform for the talks. Such disputes must be resolved as early as possible to ensure greater cooperation between the states.

As the Cauvery river has ebbed and flowed, sometimes giving bountiful water and sometimes making people thirst just for a few drops, the two states at the centre of the dispute, Tamil Nadu and Karnataka, have also reacted accordingly. A good monsoon meant no tensions between the two; lack of adequate rainfall brought out the worst among the people as well as in the politicians of the two states. One had hoped that all this would end with the final award, but that has not happened, sadly. Though lots has been written about the award and its implications since 2007, some basic misunderstandings seem to prevail even now, leading to further tensions. One of the most basic misunderstandings, perpetuated by a section of the media in Karnataka and not helped in any way by overzealous parochial-minded politicians, is that Tamil Nadu has been given 419 TMC ft. of water, while the interim award passed in 1991, had given it only 205 TMC ft. If this were true, everyone and their uncle in the Cauvery basin in Karnataka would have been justified in being up in arms. The claim, however, has no basis in facts. Let me attempt to put the award and statistics in simple terms.

What was the basic mandate before the tribunal, if one cuts through all the maze of legalities and politics over the issue? It was to come to some conclusion about how much water is available in the Cauvery basin, comprising of the four States – Karnataka, from where the river originates, Tamil Nadu, where it flows in the biggest area, Kerala which contributes more water to the river than it utilises, because of geography, and Pondicherry from where the river flows into the sea, Bay of Bengal. After years of calculations by experts and arguments by lawyers before the tribunal, it decided that at 50% dependability (of the monsoon), 740 TMC ft. of water would be available annually.

The next mandate before the tribunal was how best to divide this 740 TMC ft. between the four states annually. Again, after years of argument and counter argument, and expert opinion, it allocated 419 TMC ft. to Tamil Nadu, 270 TMC ft. to Karnataka, 30 TMC ft. to Kerala and 7 TMC ft. to Pondicherry and left 14 TMC ft. for environmental purposes. It also directed Karnataka, which is the upper riparian state (where the river originates), to ensure that 192 TMC ft. is given to Tamil Nadu annually and fixed a monthly quota to be given. Confusion must be cleared This is where all the confusion is created and must be cleared. First of all we need to know how and from where this 740 TMC ft. is generated.

How do we arrive at that figure? In simple terms, 270 TMC ft. which Karnataka is allocated plus 192 TMC ft. which it has to ensure to Tamil Nadu, comes to 462 TMC ft. This is the quantum of water, which, according to the tribunal, is the yield from the river within Karnataka annually. So out of 462 TMC ft. Karnataka has to give 192 TMC ft to Tamil Nadu. While Tamil Nadu gets this 192 TMC ft. from Karnataka, how it manages to use 419 TMC ft. is the next puzzle.

The simple answer is 419 minus 192 – which is 227 TMC ft. – is what Tamil Nadu generates from its own catchment areas within the state. If Karnataka and Tamil Nadu's yield comes to 689 TMC ft (462+227), Kerala contributes 51 TMC ft., of which it keeps 30 while 21 TMC ft is reserved for Puducherry (7) and environmental purposes (14). The sum and substance of it all is that while Karnataka contributes 462 TMC ft. it is allowed to use 270 TMC ft., Tamil Nadu which contributes 227 TMC ft. gets 419 TMC ft. and Kerala which contributes 51 TMC ft. is allowed to use 30 TMC ft. On the face of it, it certainly seems like a major injustice to Karnataka, no doubt. How did this happen? The answer to this lies in history, which we cannot re-write now. It so happened that rulers like the Cholas, who ruled that part of the country, which is now Tamil Nadu and where the river flows, had the foresight to build reservoirs and check dams in the tenth century and later, to utilise the water for irrigation. On the other hand the rulers of Mysore built their first major reservoir, K.R.Sagar only in 1934. Tamil Nadu farmers therefore had the early advantage, and when the agreements in 1894 and 1924 were signed, already over 15 to 20 lakh acres or even more was already under irrigation in that state. Karnataka in 1924 was claiming only 6.5 lakhs acres and at present it has managed to irrigate only about 15 lakh acres. This meant that about 80% of the annual yield from Cauvery was being utilised by Tamil Nadu farmers, even upto 1974, when Karnataka terminated the 1924 agreement.

With the mix of historical advantage blended with foresight as well as what is known as prescriptive right, Tamil Nadu naturally enjoys a greater share. It cannot be anyone's argument that those who have been enjoying the water all these years should now be denied it. But going by the 1924 agreement, Tamil Nadu's share, which was over 80%, has now come down to 57% and Karnataka, which was using about 16%, now gets 37%. So is the award an injustice to Karnataka? Yes, it is, but more for historical reasons than a conscious act perpetrated by the tribunal in 2007. Should Karnataka accept it without protest? No, because there are certain aspects to the award which need clarification and modification, which Karnataka through a special leave petition sought from the Supreme Court in 2007 itself. In fact even Tamil Nadu and Kerala have filed similar petitions – as these two states were also not fully happy with the award – which till now, unfortunately, have not been adjudicated. Where did the tribunal get its numbers from? Even as politicians and some sections of the media indulge in competitive parochialism based less on facts and more on emotions, one needs to look at this issue as objectively as is possible. Is the final award unfair to Karnataka? This is an obvious question that has been dogging the minds of all fair-minded citizens in the state and outside. Going by cold statistics, which is what ultimately has by and large played a major role in the tribunal's final award, we get some answers. Take for instance one of the major objections of Karnataka to the final award, which even the state's legal and technical teams have endorsed. That is about the monthly allocation made, especially in the first four months of the water year, June to September, by the tribunal. The allocations are June 10 TMC ft, July 34 TMC ft, August 50 TMC ft and September 40 TMC ft. These allocations are seen to be worrisome, as Karnataka, which is served to a large extent only by the south west monsoons, which start in June, may find itself in a quandary if the rains are not normal or fail in any year. This problem occurred even before the tribunal award, especially in 2002-02 and 2003-04, when successive failures of the monsoon created a major problem. And again in 2012 and this year, we have faced similar problems, leading to the Supreme Court directing Karnataka to release 10,000 cusecs per day for 10 days, triggering protests in Karnataka.

## THE 2018 SUPREME COURT RULING ON CAUVERY WATER DISPUTE

The legal battle over the CWDT verdict continued in the Supreme Court. In January 2018, the bench of the Chief Justice of India, Dipak Misra, and Justices A M Khanwilkar and D Y Chandrachud found that enough confusion had been created

over the Cauvery issue. The bench decided to deliver its final verdict within a month's time.<sup>10</sup> Subsequently, on 16 February 2018, the Supreme Court delivered its verdict on the issue. The bench, comprising Chief Justice Dipak Misra, and Justices Amitava Roy and A M Khanwilkar ordered Karnataka to release 177.25 thousand million cubic feet instead of 192 thousand million cubic feet of water to Tamil Nadu at the inter-state contact point at Biligundlu

## Conclusion

Political and institutional factors determine whether the issue still remains a dispute or not. A draft cabinet note<sup>12</sup> will solve the issue. Several bureaucrats have been appointed from the side of both the tamil nadu and karnataka among other states. The farmers and water experts both agree on the point that the timely release of water will be done as in accordance to the Cauvery management board. While the Tribunal's award may settle some of the legal disputes, many of the root causes of the dispute will still remain. There is need for developing a viable collective action institution to implement the award of the Tribunal. Various possibilities exist. Some of the priority actions are identified below. In both K and T states(Guhan), it is important to highlight the fact that in the constitutional scheme of things, allegiance to the constitution means the award of the tribunal must be accepted even if the award is not entirely to the liking of one or the other parties.

Otherwise, a situation of constitutional breakdown can arise. There is a need to demotionalise the issue. The media and non-governmental organisations and international organisations can play an important role in this respect. The various attempts to organise people-to-people dialogues can also be useful. Finally, it is important to recognise and encourage a self-critical awareness in water organisations and policy makers. The paradigm of masculinity is inherent in a sector where engineering and technology aspects dominate management and decision making approaches. This cannot be countered or removed in one step. It is important recognise that such biases exist and these shape and influence the way societies conceive human-environment interactions and the responses developed. Evolving and learning organisations are crucial to achieve the goal of sustainable management of precious resources such as river waters. All this due the bureaucratic approach finetunes the process as it only makes way for a smooth functioning of grass-root level democracy

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