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INTERSTATE WATER DISPUTE AND FEDERALISM: AN ANALYSIS OF CAUVERY WATER DISPUTE

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INTRODUCTION

Water is an indispensable resource, deeply intertwined with the economic, social, and environmental fabric of India. The Indian Constitution classifies water as a state subject, implying that state governments hold primary responsibility for its management. However, this classification raises a fundamental question—should the Union Government refrain from intervening in state matters, or should it play an active role in water distribution, considering its significance as a national heritage and a shared resource?

To navigate this complex debate, it is essential to examine the constitutional provisions governing water in India—Article 262, Entry 56 of the Union List, and Entry 17 of the State List. A closer look at these legal frameworks will help determine whether water governance should remain solely in the hands of states or if a more unified national approach is necessary. Article 262 prescribes, "*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 interstate river or river valley. Notwithstanding anything in this Constitution, parliament may by law provide that neither the Supreme Court nor any other court shall exercise the jurisdiction in respect of any such dispute or complaint as is referred above*[1]***".*** Entry 56 provides "*Regulation and development of inter – state rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament to be expedient in the public interest****".***[2]Entry 17 states *Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to Entry 56 of List I*." [3]

From the careful reading of the constitutional provisions, it is clear that 'water' is a union as well as state subject. However, since the major rivers in India are inter-state rivers, the union government can exercise its powers strongly. The state is bound to act in a manner that does not create a hinderance in their exercise of power.

[1]Constitution of India 1950, Article 262
[2]Constitution of India 1950, Seventh Schedule, List I, Entry 56
[3]Constitution of India 1950, Seventh Schedule, List II, Entry 17

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FAILURE OF UNION GOVERNMENT TO EXERCISE ITS POWER

Despite the wide powers available to the union government in respect to water, particularly in terms of inter-state river or river valley, it has failed to adopt any actions that could create any significant impact. This statement can be supported from the following:

RIVER BOARDS ACT 1956

One of the significant legislations enacted by the central government. Nonetheless, it cannot be ignored that till date no board has been constituted under the enactment. Moreover, the boards have been sanctioned only advisory power under the law, creating no binding force.

However, several boards and authorities have been established under various government resolutions. Still, with restrictive powers only. The Ganga Flood Commission entrusted to plan for flood control only. The Narmada Control Authority is responsible for cost allocation and rehabilitation of affected people only.

INTER-STATE RIVER WATER DISPUTES ACT 1956

Another important legislation on this subject – matter is Inter – State River Water Disputes Act 1956.

The disputes concerning Krishna, Godavari and Narmada were resolved through this enactment. Even so, it has been quite inefficient in resolving the Cauvery dispute, that has attracted many criticisms. They are:

1. Discretionary powers of the union government to determine if there exist any inter – state water dispute between the states that requires establishment of a tribunal.

This means an unfettered power is given to the union government that might be exercised in consideration of their political interests, rather than public interest.

2. Long delays in constituting a tribunal, passing of an award and publication of the award.
3. No stated guidelines to regulate the procedure to be followed by the tribunal in adjudicating the matter.

Though it can be observed that even when no guidelines have been laid down, the tribunals at the time of reaching to a decision give due consideration to the judicial pronouncements, awards passed by successive tribunals and international conventions. Moreover, it is difficult to reach a national consensus on any particular policies or guidelines to regulate the tribunal proceedings. The National Water Resource Council have made several attempts to draft such policies/guidelines with no success. It is further pertinent to realize that such policies or guidelines could only be general and broad in nature. Nothing could be drafted that could apply

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to every situation, given the uniqueness of each situation.

4. The tribunals are to be constituted since judges are not qualified or competent to decide on this technical matter.

This is a fallacious argument that judges are not qualified or competent enough to adjudicate. The judges of the Supreme Court and the High Courts determine various matters that include technicalities such as medical-negligence, insurance claims, property disputes, industrial disputes etc. Thus, nothing to prove that judges are not capable to adjudicate rights on water rights of an individual which is an important facet of Article 21, "*No person shall be deprived of his life and personal liberty except according to the procedure established by law*". Moreover, from a careful reading of Article 262, it can be deduced that the establishment of a tribunal for resolving conflicts of inter-state water was not mandatory. Hence, if Parliament had not exercised its jurisdiction to enact such a law, the court would have dealt with the matter accordingly.

5. No provision ensured implementation of the award passed by the tribunal. However, words such as "final" and "binding" has been used in this reference.

Some of these criticisms have been redressed by the Inter – State River Water Disputes Amendment Act 2002 brought on the basis of recommendation of the Sarkaria Commission and the Inter – State Council. The Amendment Act 2002 inculcated the following changes:

a. The union government is required to constitute a tribunal, within one year of receiving a request from the state government, if it considers that the dispute cannot be resolved through negotiation.

It is vital to mention that negotiation can be continued after constitution of tribunal as well. It is a preferred practice instead of adversarial mode that often deepen the issues since the aim of the parties become "winning" rather than settling the issues for the common welfare.

b. The award has to be passed by the tribunal within three years of its constitution. An extension of two years can be given.
c. The tribunal on receiving any reference post – award, for rectification of any clerical error or seeking any clarification, is required to provide a report within one year. An extension could be granted with any limitation period.
d. The award passed by the tribunal to have same effect as the decision given by Supreme Court.

While it can be clearly seen that some of the shortcomings in the Act of 1956 has been redressed by the Act of 2002, it is imperative to understand that it has its own set of flaws that needs to be redressed to ensure effective results. They are as follows:

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1. "*When any request under section 3 is received and the central government is of opinion that the water dispute cannot be settled by negotiations, the central government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the Official Gazette, constitute a Water Dispute Tribunal*"

Still the central government is the sole authority to decide for the constitution of the tribunal. Thus, how can we be assured that their decisions shall not be based on politically motivated grounds.

2. The time frame for passing an award is subject to further extension of two years.

It is fear among people that such extension would be sought in every dispute. It would become a norm rather than an exception. However, it cannot be overlooked that passage of an award within five years of the constitution of a tribunal is still a win in current scenario.

3. A clarification report to be provided by the tribunal within one year, subject to further extension without any time limitation, upon the request made by the central or the state government.

It creates anxiousness among people that repeatedly clarification reports would be sought to avoid compliance with the award passed by the tribunal.

4. Section 6 prescribes, "*The decision of the Tribunal, after its publication in the Official Gazette by the central government under sub-section (1), shall have same force as an order or decree of the Supreme Court".*

No timeframe has been prescribed during which the award has to be published by the central government in the official gazette.

5. No provision with regards to the appeal of the decision of the tribunal has been incorporated. [4]

In such a scenario, one of parties to the conflict will be left with grievances with no forum to resolve it. Such a situation might incite feelings of resentment and dissatisfaction. Nonetheless, a Special Leave Appeal (SLP) application can be filed before the Supreme Court seeking permission to file an appeal.[5]

AMBEDKAR'S STANCE ON WATER RESOURCES IN INDIA

Dr. Bhimrao Ambedkar strongly contended that powers concerning water should be with the central government, instead of princely states. This could be attributed to the ungrateful attitude

[4] Ramaswamy R Iyer, 'Federalism and Water Resources' (1994) 29(13) *Economic and Political Weekly* 733 https://www.jstor.org/stable/4400999 accessed 6 June 2024
[5] Constitution of India 1950, Article 136

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of the princely states. The states considered water to be an evil that causes mass destruction. Furthermore, he realized over-dependence of our country on water for agriculture and other purposes. Thus, he considered water to a be national asset that could never be in abundance. Moreover, he advocated the use of available water for power and navigation in the area of power and navigation. Owing to his visions, Central Waterways Irrigation (today referred to as Central Water Commission) and Navigation Commission (today called by the name of Central Electric Authority) was set up.

In spite of Ambedkar's strong insistence and valid reasoning, the subject – matter of irrigation was placed under the State List in the Government of India Act 1919 and the Government of India Act 1935. [6]

UNDERSTANDING THE CAVERY WATER DISPUTE

Cavery is one of the seven major rivers stretching over 802 kilometers. It is a sacred river in Hindu religion which is called by names by different names such as "Dakshina Ganga" or "Ganges". It serves as an economic lifeline for the southern states of our country, especially Karnataka, Tamil Nadu, Pondicherry and Kerala. This river has been a contention of dispute between Mysore and Madras since 1807.

In 1807, the irrigation projected initiated by Mysore (princely state) were objected by Madras (British Provincial) on the ground of easementary rights. However, due to the status of being a provincial state, the Madras government was favored by the government.

Thereafter, for the purpose of amicably resolving the conflict between the two states, a conference was arranged by the government. Somehow, no conclusion could be reached. Thus, Government of India had to intervene which resulted into the culmination of the General Agreement of 1892. The agreement stated that Mysore government was prohibited to undertake any irrigation project without previous approval of the Madras government. The approval to be taken after submission of complete and detailed information prior to the initiation of work. The approval could be refused only on grounds of existing prescriptive rights. Any disagreement to be resolved through a reference to an arbitration panel, consisting of arbitrators, either appointed by Government of Mysore and Government of Mysore or Government of India.

[6] Shivasundar, 'Understanding Ambedkar from the Cauvery Valley' (2017) 52(6) *Economic and Political Weekly*29 https://www.jstor.org/stable/44166172 accessed 10 June 2024.

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Though the agreement settled the matter between the state governments initially, it could not prevent the growing feelings of hostility. Together, Mysore and Madras government felt wronged. The Mysore government could not undertake any of their irrigation projects as per their own accord. The Madras government were deprived of any surplus water, beyond their share of prescriptive right. Keeping in mind, the above- stated issues, another agreement was entered into in 1924. Yet, it was still far from equal since the Madras government was preferred over the Mysore government. As claimed, "*dispute was not settled by application of law, but through the authoritative decision of the sovereign power or the British Crown*".

Once the agreement of 1924 was expired, the situation between the two states tightened. [7]The Karnataka government began releasing the water, according to their whims and fancies on the basis of seasonal conditions and their irrigation needs. Thus, aggrieved Tamil Nadu government approached the central government requesting establishment of a tribunal under the Inter – State Water Dispute Act 1956 to resolve the conflict.

The tribunal was constituted in 1990. Thereafter, an interim award was passed in 1991 allocating 205 thousand million cubic feet (hereinafter to be referred to as tmcft) water to Tamil Nadu. However, the Karnataka government explicitly refused to follow the order and passed an ordinance to nullify this effect. While the politicians openly displayed their disapproval to the award through political means, the common people showcased their anger and resentment through violence that caused death, injuries and mass destruction of property. Even after the Supreme Court's declaration of unconstitutionality of the ordinance and direction to constitute a Cauvery River Authority (CRA), no action for enforcement followed.

Only on repeated court's intervention on the plea of government of Tamil Nadu, the government of Karnataka released 0.8 tmcft water in 2002-03 which was again followed by large – scale violence. [8]

A final award was passed by the tribunal on February 5, 2007. 270 tmcft, 419 tmcft, 30 tmcft and 7 tmcft water was awarded to Karnataka, Tamil Nadu, Kerala and Pondicherry respectively out of the 740 tmcft. The monthly amount of water to be released was clearly stated, to be

[7] Midatala Rani and Middatala Rani**,** 'Historical Background of the Cauvery Water Dispute' (2002) 63 *Proceedings of the Indian History Congress* 1033 https://www.jstor.org/stable/44158173 accessed 10 June 2024.
[8] S Janakarajan, 'The Cauvery Water Dispute: Need for a Rethink' (2016) 51(41) *Economic and Political Weekly* 10 https://www.jstor.org/stable/44165778 accessed 6 October 2024.

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adjusted in low flow years. A Cauvery Management Board (CMB) was directed to be constituted to ensure enforcement of the award.

The situation that settled in 2007, erupted drastically in 2012-2013 due to poor monsoon and low rainfall. The Karnataka government refused to release water, until a strong condemnation was made by the court. Thereafter, it filed a request before the court to direct the CRA to reconsider the proportion of water sharing in view of changed facts and circumstances. However, much to Karnataka government's disliking, the CRA reiterated its earlier direction. The Karnataka government was required to release 9,000 tmcft water. This further aggravated the situation to such an extent that any negotiation between the government on this matter did not yield any result. Scared that such strained relationship and repeated denial of water access would occur in future, the Tamil Nadu government sought establishment of CMB. Henceforth, it was established through court order in 2016.

Lastly, in 2018, putting a legal end on the matter, the Supreme Court upheld the validity of the final award passed by the tribunal and directed the union government to formalize it through creation of a Cauvery Management Scheme (CMS).

ANALYSING THE CAUVERY WATER DISPUTE

From the reading of different literatures, the following reasons has made it difficult to resolve the inter-state water dispute:

1. The residual feelings of being wrong in the hands of British administration left a lingering feeling of hate and mistrust that made negotiations unsuccessful.
2. Since the river has such a strong historical and cultural significance, the emotions of people could be easily ignited. The politicians used the emotions of general for their own political advantage. In 2012, different political parties were ruling union government, government of Karnataka and government of Tamil Nadu who had to ensure their "win" in order to succeed in forthcoming elections.
3. Lack of initiatives by government, civil society organizations and individuals to resolve this issue.

It is pertinent to highlight that one such attempt was made in 2003. A meeting of representatives of the state government, administrators, media persons, engineers, academicians and farmers was arranged in Chennai in 2003. Surprisingly, the meeting concluded with the promise to reach a solution that would be suitable for both the parties. Subsequently, a second meeting

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was arranged that led to constitution of a committee consisting of farmers, advisors and facilitators that would visit the states to better understand the situation. Though this meeting brought hope for peace, unity and brotherhood, it could not be culminated into an action.

4. Inefficient use of legal powers given to the union government to resolve the issues concerning inter-state river water dispute. It is no doubt that change in the river of an intra-state and inter-state creates change in the water resources of another states, still no national policies have been adopted for the purpose of advancing supervision, management and coordination. Moreover, no step has been taken for transfer of river basin from one state to another even when it could ameliorate the situation that is caused due to uneven spread of water in time and space.
5. Over – utilization of under – available water resources. There is a need to establish a commission/committee that could ensure that needs of people of a particular state are met from the available water resource. [9]

CONCLUSION

The Cauvery water dispute is a testament to the complexities of inter-state water governance in India. While constitutional provisions grant both the Union and state governments authority over water resources, political and administrative inefficiencies have prolonged conflicts rather than resolving them. The dispute highlights critical issues—historical grievances, political motivations, and the failure of existing legal frameworks to ensure swift and effective resolutions.

Despite multiple legal interventions, including tribunal awards and Supreme Court directives, implementation remains a significant challenge. The lack of a robust enforcement mechanism has resulted in recurring conflicts, exacerbating tensions between Karnataka and Tamil Nadu. While amendments to the Inter-State Water Disputes Act have attempted to streamline dispute resolution, gaps in execution continue to hinder progress.

Moving forward, a more proactive approach is necessary. Strengthening the role of independent regulatory bodies, fostering cooperative federalism, and emphasizing scientific water management strategies could offer sustainable solutions. Moreover, depoliticizing water disputes and focusing on equitable distribution through technological advancements and

[9] Ramaswamy R Iyer, 'Cauvery Dispute: A Dialogue between Farmers' (2003) 38(24) *Economic and Political Weekly* 2350 https://www.jstor.org/stable/4413671 accessed 14 June 2024

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conservation efforts may help mitigate future conflicts. Ultimately, water should be viewed not as a political tool but as a shared resource that demands collaborative and responsible governance for the collective well-being of all stakeholders.