

---

# **A CRITICAL ANALYSIS ON CAUVERY WATER DISPUTE IN ADMINISTRATIVE LAW INSIGHT**

---

Madhupratika S, The Tamilnadu Dr.Ambedkar Law University (School Of Excellence In Law), Chennai

## **ABSTRACT**

The most common crisis as of now, is water. Water is inevitable for every human being's survival. There has been disputes recently concerning water sharing between states and even nations. These issues pave way to unnecessary violence and protests, which was a very obvious result of the most controversial Cauvery water dispute between the state of Tamil Nadu and Karnataka in sharing water from Cauvery basin.

This article deals with the historical origin and details of the dispute, the reason for the uproar of the dispute, the constitutionality of inter-state water disputes and the powers given to branches of government in creation of authorities and commissions and the power of adjudication ensured to them by several acts. The article also emphasizes on the formation of the Cauvery water dispute tribunal and the final awards issued by it.

The final verdict of Supreme Court is analysed and its creation of administrative bodies to handle the issue is discussed efficiently. The recent stand of the dispute is more or less recurring, for which the solutions are discussed. Thus, to make it more accurate, this article lays its focus on the administrative functions which aided the authorities of the government to more or less solve the problem of water sharing and to secure fraternity between the states, hereby to prove that administrative law is present and performing in each and every problem that arises in a welfare state.

**INTRODUCTION:**

Conflicts have emerged among neighbouring nations due to disputes over shared river basins in several cases. Prominent illustrations encompass the enduring disagreements between India and Pakistan regarding the Indus River, the contentions involving Sudan, Egypt, and Ethiopia over the Nile, and the contentious matters concerning the Jordan River involving Israel, Palestine, and Syria. As a result, the "Right to Watercourse" concept has become a contentious issue among these neighbouring countries. Disputes have arisen within the country in sharing the river basins passing through two or more states. In such cases, the jurisdiction of the dispute will be contained within the state itself. The Cauvery water dispute, a historical issue of great significance, led to the establishment of tribunals and committees responsible for overseeing water allocation among four regions: Tamil Nadu, Kerala, Karnataka, and the union territory of Puducherry. This conflict traces its origins back to the British colonial period in India. The process of managing and resolving this dispute required the utilization of various administrative functions and authorities, rendering it a subject ripe for thorough examination. Upon the completion of this research, you will acquire a comprehensive grasp of the historical backdrop, the creation of the tribunal, the rationale behind Tamil Nadu's recourse to the Supreme Court, even after the tribunal's inception, the ultimate judgment issued by the highest court, and the establishment of additional committees and bodies tasked with managing administrative aspects related to this issue.

**HISTORICAL BACKDROP:**

The Cauvery River, referred to as the "Ponni Nadhi" in Tamil, carries profound cultural and spiritual importance as the most venerated river in South India. Its source lies on the Brahmagiri Hill in the south western region of Karnataka, from where it flows in a south easterly direction, traversing through both Karnataka and Tamil Nadu. As it progresses, the river descends from the Eastern Ghats, creating a breath taking series of cascading waterfalls before ultimately meeting the Bay of Bengal via Pondicherry. The Cauvery River, which originates in Karnataka, traverses Tamil Nadu, and receives significant contributions from tributaries in Kerala, ultimately flows into the Bay of Bengal via Pondicherry. As a result, this dispute involves three states and one Union

Territory.<sup>1</sup>

The genesis of this conflict dates back 150 years to two arbitration agreements reached in 1892 and 1924 between the then Madras Presidency and Mysore. These agreements established the fundamental principle that any upper riparian state must secure the consent of the lower riparian state before undertaking construction activities, such as reservoirs, along the Cauvery River. The Cauvery River holds a collective water volume of 740 TMC (Thousand Million Cubic Feet). Within this total, Karnataka contributes 462 TMC, Tamil Nadu contributes 227 TMC, and Kerala adds 51 TMC through its catchment area.<sup>2</sup>

The Cauvery water dispute between Karnataka and Tamil Nadu gained momentum in 1974 when Karnataka began diverting water from the river without first obtaining consent from Tamil Nadu. To tackle this challenge, **the Cauvery Water Disputes Tribunal (CWDT)** was established in 1990. It engaged in deliberations for a period of 17 years before eventually delivering its final ruling in 2007 concerning the fair allocation of Cauvery water among the four riparian states during regular rainfall conditions. The formation of the CWDT was carried out by the Central Government, exercising its authority as stipulated in Section 4 of the Inter-State River Water Disputes Act of 1956<sup>3,4</sup>

### THE ACTUAL CAUSE OF THE DISPUTE:

The Cauvery River holds a total water volume of 740 TMC (Thousand Million Cubic Feet), distributed among four states. As per the 2007 award, Karnataka was mandated to allocate an additional 192 TMC of river water from its share to support irrigation for Tamil Nadu farmers. This particular requirement has been a source of dispute, especially for the Karnataka government, particularly during years characterized by weak monsoon seasons. Normally, Karnataka releases more water than the prescribed 192 TMC to mitigate the risk of flooding within its territory. However, the challenge emerges during periods of drought resulting from insufficient monsoon rainfall. Despite receiving precipitation from both South west and Northeast monsoons, the

---

<sup>1</sup> <https://www.drishtias.com/daily-updates/daily-news-analysis/cauvery-water-sharing-dispute> , last visited on Sept 19,2023

<sup>2</sup> <https://www.legalserviceindia.com/legal/article-695-cauvery-water-crisis.html> , last visited on Sept 19,2023

<sup>3</sup> Inter-State River Water Dispute Act,1956,S.4,No.33,Act of parliament(India)

<sup>4</sup> <https://www.studyiq.com/articles/cauvery-river-water-dispute/> , last visited on Sept 19,2023

Cauvery River sometimes faces inadequate rainfall due to the effects of climate change. In 2007, the tribunal's final award specified that Karnataka should release water to Tamil Nadu on a monthly basis, with specific volumes outlined. This arrangement operates smoothly during typical monsoon conditions, but difficulties arise during weaker monsoon seasons. This water dispute has given rise to numerous protests, straining relations between Karnataka and Tamil Nadu.<sup>5</sup> The government took 6 more year and notified the order in 2013. In 2016, Tamil Nadu government had approached the Supreme Court with the special leave petition under Article 136<sup>6</sup>. The Tamil Nadu Government had approached the court because Karnataka government was not following the award of the tribunal. As a result, verdict was given by Supreme court and committees were formed to give effect to its decision.

### **CONSTITUTIONALITY:**

1) **ARTICLE 262<sup>7</sup>:** Article 262(1) establishes Parliament's authority to craft legislation aimed at resolving disputes or grievances concerning the use, distribution, or management of transboundary waters within a river or river valley. Additionally, Article 262(2) grants Parliament the power to pass a law that can override the jurisdiction of the Supreme Court or any other court in matters pertaining to the disputes or appeals outlined in Article 262(1). As per Article 262(1), the responsibility of drafting and enacting such legislation lies squarely with Parliament. This underscores that Parliament carries the primary responsibility for initiating this legislative action.

Article 262(2) explicitly states that "Parliament may legislate...". In the context of Article 13(3)<sup>8</sup> of the Constitution, the term "law" encompasses various legal instruments, including acts, orders, regulations, notifications, or binding directives within India. The scope of such legislation can encompass issues related to a transboundary river or river valley. The introduction of Article 262(2) with the phrase "despite this constitution..." signifies that other constitutional provisions that may come into conflict with Article 262(2) are superseded. For example, Article 131<sup>9</sup>, which establishes the Supreme Court's primary jurisdiction in disputes between two or more States, does

---

<sup>5</sup> <https://www.legalserviceindia.com/legal/article-695-cauvery-water-crisis.html> , last visited on Sept 20,2023

<sup>6</sup> Indian constitution.art.136

<sup>7</sup> Indian constitution.art.262

<sup>8</sup> Indian constitution.art.13,cl.3.

<sup>9</sup> Indian constitution.art.131

not apply when considering Article 262(2). If Parliament intends to divest the Supreme Court of jurisdiction over cross-border river water disputes, it must follow the procedure outlined in Article 13(3), as it employs the term "legislation."

In instances where Parliament has not enacted any legislation pursuant to Article 262(2), it retains the option to refer the matter to the Supreme Court or a higher court. The use of the term "may" in this context indicates that the decision to introduce such legislation rests within the discretionary powers of Parliament.

**2) JURISDICTION:** Entry 17 in Schedule II (List of States) of Schedule 7 encompasses various facets related to water resources, including water sources, irrigation, canals, drainage, reservoirs, and hydropower. Notably, the provisions related to water supply, irrigation, and hydropower are pertinent to transnational rivers, as many disputes across borders revolve around these specific issues. Consequently, the government is vested with the authority to establish laws to address these concerns. However, the scope of this authority of the national government is contingent upon the provisions delineated in Article 56<sup>10</sup> of Schedule I. List I, also referred to as the Union List, when interpreted in conjunction with Article 246(1)<sup>11</sup> of the Constitution, confers upon Parliament the competence to formulate laws pertaining to the regulation and development of rivers and valleys that traverse multiple states. This authorization is granted on the condition that such regulations and development endeavours are deemed to serve the public interest. Entry 17 explicitly underscores that the provisions of Article 56 of Schedule I are pertinent to this governmental prerogative.

**3) ARTICLE 131 AND ARTICLE 136<sup>12</sup>:** There have been cases where countries have utilized Articles 131 and 136 of the Constitution in disputes involving cross-border river basins. For example, Tamil Nadu lodged an initial complaint in 2001 under Article 131, asserting that interim measures were insufficiently regulated. Subsequently, when the states of Karnataka, Tamil Nadu, and Kerala expressed their discontent with the Cauvery Water Dispute Tribunal's 2007 ruling, they

---

<sup>10</sup> Indian constitution.art.56

<sup>11</sup> Indian constitution.art.246,cl.1.

<sup>12</sup> Indian constitution.art.136

applied for special permission under Article 136. The Supreme Court granted acceptance to these applications.

**4) INTER-STATE RIVER WATER DISPUTES ACT, 1956:** The 1956 Water Disputes Act was enacted in accordance with Article 262 of the Constitution, designating a pivotal role for the central government. Under Article 4(1)<sup>13</sup> of the Act, the central government is vested with the authority to establish a water tribunal responsible for adjudicating water disputes involving state governments. Article 5(2)<sup>14</sup> of the Act mandates that the Water Tribunal must furnish a report to the central government within three years, outlining the facts and its decision. Subsequently, the central government publishes the tribunal's decision in the official gazette. Once published, this decision holds the same legal significance as an order or judgment issued by the Supreme Court.

As a result, the central government possesses the power to enforce the tribunal's rulings, and it retains the option to dissolve the tribunal if deemed necessary. Section 11<sup>15</sup> of the Act explicitly excludes the jurisdiction of the Supreme Court and other courts in matters governed by this law. While this legislation doesn't diminish the central government's role, it intricately involves the central government in various facets of the tribunal's proceedings. The arbitration tribunal submits its report to the central government, thus positioning it within the hierarchy alongside state governments and their subordinate courts when addressing disputes related to river water.

**5) RIVER BOARDS ACT, 1956:** Even though the Rivers Act was enacted in 1956, no river basin was actually established under this Act. Nonetheless, it is crucial to examine this law to understand the role of the Central government in resolving river disputes among states, as delineated in this Act. In accordance with Section 2<sup>16</sup> of the Act, the Central government is tasked with overseeing the development and management of transnational rivers and river valleys. Upon the request of a state government, the Central government has the option to create a river council. The term "may" employed here implies that the establishment of such a council is contingent upon the discretion of the Central government. The agency may also formulate, amend, or reject projects related to river or river valley development between nations. By law, the Central government bestows

---

<sup>13</sup> Inter-State River Water Disputes Act, 1956, S.4, No.33, Act of parliament(India)

<sup>14</sup> Inter-State River Water Disputes Act, 1956, S.5, No.33, Act of parliament(India)

<sup>15</sup> Inter-State River Water Dispute Act, 1956, S.11, No.33, Act of parliament(India)

<sup>16</sup> River boards Act, 1956, S.2, No.49, Act of parliament(India)

powers upon the council to carry out its functions. The board is required to submit an annual report to the Central government and the relevant state governments, indicating that the council is answerable to the Central government for its actions.

The Central government retains the authority to establish regulations for the achievement of the law's objectives. Hence, it appears that the dissolution of the board becomes necessary "if the Central government agrees." While the primary actors in these disputes are the individual state governments, the manner in which conflicts are resolved involves interactions with the Central government. The mechanisms put in place for the adjudication of such disputes are answerable to the Central government and owe their existence to the Central government. Consequently, asserting that water and inter-state water disputes fall exclusively within the domain of state governments due to their presence in the State List is misleading. The Central government plays an equally, if not more significant role in inter-state river water disputes.<sup>17</sup>

### **FORMATION OF TRIBUNAL AND ITS FINAL AWARDS:**

The Government of India constituted the Cauvery Water Disputes Tribunal (CWDT) on June 2, 1990, to adjudicate the water dispute between the states of Tamil Nadu, Karnataka, Kerala and Puducherry with respect to the inter-state Cauvery water and river basin. The Tribunal issued an Interim Order in June 1991, followed by Clarificatory Orders on the Interim Order in April 1992 and December 1995. Subsequently, on February 5, 2007, the CWDT submitted its reports and decisions as per Section 5(2) of the Inter-State River Water Disputes Act, 1956<sup>18</sup>, to the Government. It's important to note that the final order of the CWDT was officially published in the official gazette on February 19, 2013, and has been in effect and binding on the respective states since then.<sup>19</sup>

After a 17-year deliberation, the Cauvery Water Disputes Tribunal (CWDT) issued its definitive ruling in February 2007, outlining the distribution of water among the four states within the

---

<sup>17</sup> [https://blog.ipleaders.in/inter-state-river-water-dispute-in-india/#Constitutional\\_and\\_statutory\\_provisions](https://blog.ipleaders.in/inter-state-river-water-dispute-in-india/#Constitutional_and_statutory_provisions) , last visited on Sept 21,2023

<sup>18</sup> Inter-State River Water Dispute Act,1956,S.5,No.33,Act of parliament(India)

<sup>19</sup> [https://indiawris.gov.in/wiki/doku.php?id=cauvery\\_water\\_disputes](https://indiawris.gov.in/wiki/doku.php?id=cauvery_water_disputes) , last visited on Sept 21,2023

Cauvery basin throughout the year. Taking into account the usual annual water availability in the Cauvery basin, which amounted to 740 TMC (Thousand Million Cubic Feet):

- Tamil Nadu was granted 419 TMC (despite initially requesting 512 TMC).
- Karnataka was allocated 270 TMC (in contrast to their initial demand of 465 TMC).
- Kerala received 30 TMC.
- Pondicherry was assigned 7 TMC.

Additionally, the final award earmarked 10 TMC for environmental preservation purposes and 4 TMC for unavoidable discharges into the sea. The tribunal also mandated the creation of a monitoring authority responsible for supervising the controlled release of water. However, the final award did not furnish an intricate formula to address situations of water scarcity resulting from inadequate rainfall. Instead, it simply stated that in such circumstances, the allotted shares should be adjusted in proportion.<sup>20</sup>

### **SPECIAL LEAVE PETITION:**

The Supreme Court, India's highest court, has been given a special jurisdiction, according to Article 136 of the Indian Constitution. The said article only applies to judicial decisions. The constitutional provisions of Article 136 are mentioned below:

Despite the provisions of this Chapter, the Supreme Court may, at its discretion, grant special leave to appeal any judgment, decree, resolution, sentence, or order made by any court or tribunal within the Indian territory in any case or matter. Nothing in clause (1) shall be applicable to any ruling, decision, sentence, or order rendered by a court or tribunal established by or operating under a law pertaining to the Armed Forces.<sup>21</sup>

---

<sup>20</sup> <https://vajiramandravi.com/upsc-daily-current-affairs/mains-articles/cauvery-water-dispute/> , last visited on Sept. 22,2023

<sup>21</sup> Indian Constitution.Art.136



According to the Indian Constitution, the Supreme Court of India holds "discretionary powers." It is empowered to grant special permission to consider appeals on decisions, decrees, or orders issued by any court or tribunal within the Indian subcontinent across a wide range of cases. The Supreme Court of India has the discretion to decide whether or not to allow such appeals. In *N. Suriyakala v. A. Mohandoss & others*<sup>22</sup>, the court held that the Article 136 of the Constitution doesn't serve as a typical route for filing appeals. Instead, it grants the court the authority to utilize its discretion. This article empowers the Supreme Court with substantial discretionary powers to uphold the principles of justice, without inherently granting the parties involved in a dispute the right to appeal.<sup>23</sup>

### FINAL JUDGEMENT OF SUPREME COURT:

In 2018, the final verdict of Supreme Court came and it declared Cauvery a "national asset". It largely upheld the final order of the tribunal and reduced the allocation of water from Karnataka to Tamil Nadu. As, Karnataka would get 284.75 tmcft, Tamil Nadu 404.25 tmcft, Kerala 30 tmcft and Puducherry 7 tmcft. The Supreme Court by its verdict also directed the centre to notify the Cauvery management scheme.<sup>24</sup> Under the provisions of Section 6A of the ISRWD Act, 1956<sup>25</sup>, the Central Government instituted a program known as the "**Cauvery Water (Implementation of Interim Orders of 1991 and all subsequent Tribunal Orders) Scheme, 1998.**"

This program comprises two key bodies: **the Cauvery Water Authority (CRA) and the Monitoring Committee (CMC)**. The Cauvery River Authority is led by the Honourable Prime Minister and includes the Chief Ministers of the states within the Cauvery basin as its members. The Secretary of the Ministry of Water Resources serves as the Secretary of this Authority. Meanwhile, the Monitoring Committee is chaired by the Secretary of the Ministry of Water Resources and includes the Chief Secretaries and Chief Ministers of the states situated within the basin as its members.<sup>26</sup> The creation of the Cauvery Water Regulation Committee (CWRC) was

---

<sup>22</sup> In *N. Suriyakala v. A. Mohandoss & Others*, 9 SCC 196

<sup>23</sup> <https://blog.examarly.com/upsc/article-136-of-indian-constitution/#:~:text=A%20special%20leave%20petition%20gives,require%20a%20special%20leave%20petition.>, last visited on Sept. 23, 2023

<sup>24</sup> <https://www.studyiq.com/articles/cauvery-river-water-dispute/>, last visited on Sept. 23, 2023

<sup>25</sup> Inter-State River Water Dispute Resolution Act, 1956, S. 6A, No. 33, Act of parliament (India)

<sup>26</sup> <https://jalshakti-dowr.gov.in/cauvery-water-dispute/#:~:text=The%20Government%20of%20India%20constituted,Formed.>, last visited on Sept. 23, 2023

undertaken to facilitate the execution and supervision of the CWDT's award. Its primary role is to regulate the equitable distribution of water in compliance with the award's provisions. The committee's responsibilities encompass monitoring the release of water from Karnataka's reservoirs and ensuring that the designated water allocations are delivered to Tamil Nadu, Kerala, and Puducherry as stipulated by the established formula.

### **RECENT STAND IN THE ISSUE:**

In the recent times, the Karnataka government has moved to the Supreme Court despite the order of CWMA to continue releasing 5,000 cusecs of water to Tamil Nadu for another 15 days after CWRA's recommendation. However, Karnataka has been in its stand that it is not in the position to release water to Tamil Nadu due to its needs like drinking water, standing crops in the Cauvery basin, mentioning scarcity to insufficient monsoon rains. The Supreme Court chose not to intervene in the directives issued by the Cauvery Water Management Authority and Cauvery Water Regulation Committee, which had ordered Karnataka to release 5,000 cusecs of water to Tamil Nadu. This ruling was made in the context of the ongoing dispute between the two states regarding the distribution of river water, which continued to provoke debates and disputes. It can be inferred that the Cauvery water dispute is a never ending issue and it may recur anytime. But it will not be as violent as it was because of various administrative set ups like committees and tribunals carrying out their functions perfectly.<sup>27</sup>

### **ANALYSIS IN LIGHT OF ADMINISTRATIVE LAW AND SUGGESTIONS:**

Administrative law, a branch of constitutional law, primarily deals with the executive branch of government, encompassing areas such as executive rule-making, adjudication, and law execution. In the context of the Cauvery water dispute, the Cauvery Water Dispute Tribunal serves as an administrative entity vested with the authority to issue final rulings on the matter. It is crucial for state governments to adhere to the tribunal's ultimate directives. Unfortunately, in this dispute, compliance with these orders has been lacking, resulting in numerous casualties and injuries due to violent conflicts between the states. It is clear that the Karnataka government had reservations

---

<sup>27</sup> <https://www.outlookindia.com/national/cauvery-water-dispute-supreme-court-refuses-to-intervene-with-orders-directing-karnataka-to-release-water-to-tamil-nadu-news-319628> , last visited on Sept. 24,2023

regarding the release of water to Tamil Nadu. However, it is essential to underscore that disregarding the tribunal's orders and resorting to impulsive violence is not an appropriate course of action.

To tackle these challenges, the Supreme Court took a significant administrative measure by establishing the Cauvery Water Management Authority (CWMA) and Cauvery Water Regulation Authority (CWRA). This represents a substantial advancement in the context of inter-state disputes. Now, if states are dissatisfied with the decisions of these committees or authorities, they have the option to seek the Supreme Court's judgment. This approach reduces the potential for further disputes and violence while fostering greater peace and security among the states. It is a suggestion that the branches of government must have utilised the functions of administrative law sooner, which would have resulted in a lot lesser damage to people and society.

## **CONCLUSION:**

Unlike past, wars will never be on oil, but on water in the present century. As highlighted in this article, the Cauvery water dispute holds significant importance within the realm of administrative law due to the substantial influence wielded by committees and tribunals in its resolution. While the Supreme Court possesses jurisdiction to adjudicate water disputes initiated by states, Article 262 of the Indian Constitution grants Parliament the authority to oversee the Supreme Court's jurisdiction in cases of inter-state water disputes. This intricate matter involves the application of various administrative law principles, including the special leave petition, the Doctrine of Separation of Powers, the Doctrine of Riparian Rights, the establishment of tribunals, delegated legislation, and the Doctrine of Checks and Balances. These principles collectively contribute to reaching a conclusive decision aimed at fostering peace and fairness. It's important to recognize that despite the Cauvery water dispute remaining unresolved and prone to recurring challenges, administrative bodies play a pivotal role in its management, reducing potential harm and ensuring the availability of vital resources, particularly for the farming community. The complexity of the issue is further compounded by natural factors such as monsoon rain deficits. Nonetheless, administrative law functions as a crucial instrument for the state to maintain control over its actions, ensuring the provision of essential resources for survival and nurturing a harmonious

coexistence among the parties involved, with a particular focus on the well-being of farming communities.

Anyone who can solve the problems of water will be worthy of two Nobel prizes  
- one for peace and one for science.

-JOHN.F.KENNEDY

## REFERENCES:

1. <https://www.legalserviceindia.com/legal/article-695-cauvery-water-crisis.html>
2. [https://blog.ipleaders.in/inter-state-river-water-dispute-in-india/#Constitutional\\_and\\_statutory\\_provisions](https://blog.ipleaders.in/inter-state-river-water-dispute-in-india/#Constitutional_and_statutory_provisions)
3. <https://www.studyiq.com/articles/cauvery-river-water-dispute/>
4. <https://vajiramandravi.com/upsc-daily-current-affairs/mains-articles/cauvery-water-dispute/>
5. [https://indiawris.gov.in/wiki/doku.php?id=cauvery\\_water\\_disputes](https://indiawris.gov.in/wiki/doku.php?id=cauvery_water_disputes)
6. <https://www.drishtiiias.com/daily-updates/daily-news-analysis/cauvery-water-sharing-dispute>
7. <https://jalshakti-dowr.gov.in/cauvery-water-dispute/#:~:text=The%20Government%20of%20India%20constituted,Formed.>
8. <https://blog.examarly.com/upsc/article-136-of-indian-constitution/#:~:text=A%20special%20leave%20petition%20gives,require%20a%20special%20leave%20petition.>
9. <https://www.outlookindia.com/national/cauvery-water-dispute-supreme-court-refuses-to-intervene-with-orders-directing-karnataka-to-release-water-to-tamil-nadu-news-319628>
10. An article on “Strategic Insights into the Cauvery River Dispute in Indi by Ajar Sharma,Keith W. Hipel and Vanessa Schweizer ( <https://doi.org/10.3390/su12041286> )