

What does the Cauvery water conflict teach us?

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Image credit: IANS

When the Cauvery Water Disputes Tribunal was established in 1990, as per the provisions of the Constitution, it was expected to find a permanent solution to the decades-long water-sharing dispute between Karnataka and Tamil Nadu. Though the tribunal gave its final award in 2007, the recent **violence** in **both** states over water sharing shows that a lasting solution is still elusive. The Cauvery river originates in Karnataka and then flows through Tamil Nadu before reaching the Bay of Bengal. Kerala and Pondichery are the other two riparian states. According to the tribunal's final award, the share of the four contending parties is as follows: Karnataka 270 tmcft [thousand million cubic feet], Tamil Nadu 419 tmcft, Kerala 30 tmcft, and Puducherry seven tmcft. The tribunal also earmarked 10 tmcft for environmental protection and a mere four tmcft as "quantity determined for inevitable escapages into the sea". Karnataka, which felt the award was unjust, first approached the Supreme Court with a Special Leave Petition, and was soon followed by the other three stakeholders – Tamil Nadu, Kerala and Puducherry.

Legal redressal

In India, water is primarily a state subject except in the case of inter-state rivers where the Union government can intervene. The [Inter-State Water Disputes Act, 1956](#), provides for the constitution of a water disputes tribunal as a legal mechanism to resolve inter-state water disputes. Once a tribunal is constituted, the Act bars the Supreme Court from intervening in the adjudication process. In the case of the Cauvery water dispute, after the declaration of the final award in 2007, the contending states had the liberty to go back to the tribunal with a review petition for a supplementary award. However, they approached the Supreme Court instead. Since the Inter-State Water Disputes Act bars the intervention of the Supreme Court after the constitution of the tribunal, the apex court should have directed the petitions to the tribunal instead of admitting these petitions. The September 5 **directive** of the Supreme Court asking Karnataka to release 15,000 cusec of water to Tamil Nadu for 10 days needs to be seen in this context. Another legal window for inter-state water dispute redressal is the River Boards Act of 1956. However, this has never been used in India because of resistance from the states. Since both the Inter-State Water Disputes Act and River Boards Act have not been able to resolve conflicts for various reasons, a constitutional review committee set up in 2000 recommended that water be shifted to the concurrent list so that the Union government could make decisive interventions in case of a dispute. However, there are many in the water sector who believe that this will not help solve inter-state water conflicts either. The critical issue is this: how can we engage with inter-state water disputes in the true spirit of federalism?

Issues at stake

The dispute between Karnataka and Tamil Nadu over water sharing exposes the distrust that both states show each other. Karnataka, a relatively late entrant in the development of Cauvery water for irrigated agriculture, believes that its legitimate entitlement to use water is being questioned. Tamil Nadu, on the other hand, has had a much earlier history of development of irrigation in the Cauvery basin, especially in the delta region, and being a lower riparian state feels that it is at the receiving end both literally and metaphorically. The situation is further exacerbated as Tamil Nadu has to bear the brunt of the burden of floods, drought and pollution. Tamil Nadu also finds itself at the mercy of the Karnataka government during each scarcity year when Karnataka reasons that if there is no water for its own farmers, how can it release water to the downstream state? Karnataka's apprehension regarding the apex court directive to release water to Tamil Nadu in the background of below normal rainfall in the catchment must be seen in this context. In a private note circulated in 2003, the late water policy expert, Ramaswamy Iyer, said:

"It must be noted that in Indian or international law, there is no ownership right over flowing waters. Neither Karnataka nor Tamil Nadu (nor Kerala, nor Pondicherry) owns the Cauvery. They all have use-rights. There is no hierarchy of rights; neither the upper riparian nor the lower riparian has primacy. There is an equality of rights, but of course not an entitlement to equal shares. How much each State is entitled to is a matter for agreement or adjudication with reference to the considerations mentioned earlier. It is inappropriate to talk of the upper riparian 'giving' waters to the lower riparian, as though this is a gift. At the same time, there is no question of the lower riparian asserting a pre-emptive right to waters to the detriment of the upper riparian. The upper riparian cannot say to the lower riparian: "*This is a difficult year. We do not have enough water for our own needs. We cannot spare any water for you.*" Even in a difficult year the available waters have to be shared. The lower riparian cannot say to the upper riparian: "*We have been receiving certain flows for centuries. They must continue to come to us undiminished. This is our absolute right.*"

Very often conflicts over sharing of water arise in distress years. This has been especially true in the case of Cauvery. However, there is no clear direction as how to share shortages. An important gap in the Cauvery tribunal award was that it did not come out with a clear strategy for sharing shortages. This is true not only with the Cauvery tribunal, but also in the case of other tribunals. The Cauvery tribunal does mention that shortages need to be shared on a *pro rata* basis. However, since shortages are not uniform across time and space we need a more nuanced understanding of how to deal with shortages as well as an institutional mechanism to address it.

A million revolts

The Cauvery conflict is not an isolated case. There are different types of water conflicts unfolding in the country – what some of us call "[a million revolts in the making](#)". One of the important types of conflicts is the inter-state water conflict, and there seems to be a flare up of such incidents in India over the last few months. This includes the one between Andhra Pradesh and Telangana over the sharing of the Krishna and Godavari waters. Then there is a conflict between Punjab, Haryana and Delhi. In 2004, the Punjab Assembly went to the extent of unanimously passing the [Punjab Termination of Waters Agreement Act](#), which annulled all previous agreements pertaining to the sharing of the Ravi-Beas waters with Haryana, Rajasthan and Delhi. The matter is still in court. Recently there has been [conflict](#) between Karnataka and Goa over the sharing of the water of the Mahadayi river. Similarly, over the last two or three months there has been [increasing tension](#) between Odisha and Chhattisgarh over the sharing of the waters of the Mahanadi. Interestingly, civil society organisations from both Odisha and Chhattisgarh met in Raipur recently where they resolved to fight the efforts of political parties to divert the attention of the people from the real issue, which, according to them, is of industries grabbing the water from agriculture.

[Water conflicts](#)

The other important types of water-related conflicts include:

[Those related to dams and displacement, as in the case of the Sardar Sarovar project and the Polavaram project. Contestations over water use, especially because of the increasing water re-allocations taking place from agriculture to industry and urban use. For instance, in the case of Hirakud dam on the Mahandi in Odisha, over the last 20 years, there has been a massive farmers' movement against increasing water re-allocations to industries. Also in Maharashtra, more and more water is getting reallocated to urban and industrial use triggering contestations and conflicts. Equity in water access. Very often farmers in the tail end of irrigation projects do not get access to water, which is also called tail-end deprivation. Water pollution. This is a major area of conflict especially due to industrial pollution. Water privatization, is emerging area of conflict. For instance, the struggle in Plachimada in Kerala against resource privatization. There are also conflicts unfolding in towns and cities over the privatisation of water service delivery.](#)

The list can go on as water conflicts in India reach every level and divide every segment of our society – political parties, states, regions and sub-regions within states, districts, castes, and farmers. Overall, the resources-related conflicts, especially those related to water, will increase in the future. One of the main reasons for this is the developmental trajectory being pushed by the government. The preoccupation with growth rates of 8%-10% through the industrial route is going to put greater and greater stress on natural resources like water, land and forests. Water will increasingly move from agriculture and rural areas to industries and urban areas impacting the lives and livelihoods of rural people. This will give rise to contestation and conflicts. The efforts of the present government at the Centre to dilute many of the environment and justice-related laws and regulations in the country (like the Land Acquisition Act, and the requirement for Environmental Impact Assessments) to push through infrastructure projects will further exacerbate the situation.

The possible way ahead

Water conflicts are symptoms of larger issues in the governance of water resources. Implicit in these so-called million revolts around water is a demand for change – first, in the ways we think about water, and second, in the ways we manage it. For instance, we need to get out of the thinking that sees water flowing out to the sea as water going waste. This thinking, still prevalent in the country, led to a water management strategy centred on dams. The lesson is that water is a resource embedded within ecosystems and we cannot treat it as a freely manipulable resource. Too many of our mega projects, whether big dams, or diversions or interlinking schemes, treat water as freely manipulable and do harm to the long-term viability and sustainability of the resource itself. Coming back to the Cauvery conflict, one important element missing from the various attempts to resolve the conflict is the active participation of farmers, the primary stakeholders. It was this realisation that prompted the Madras Institute of Development Studies to initiate a dialogue between the farmers of Karnataka and Tamil Nadu in 2003. This was the origin of the famous Cauvery Family, a body comprising farmers, engineers, water experts, economists and politicians associated with farmers' bodies from the two sparring states. According to S Janakarajan, water expert and a professor at the institute, who was one of those behind the Cauvery Family initiative, though no clear cut solution could be reached through this process, the [dialogue](#) had been quite successful in defusing the tension especially in terms of violence and destruction to property, and also created an atmosphere of mutual understanding and sensitivity. Apparently between 2003 and 2012, the period when Cauvery family was active, no violence erupted. Furthermore, the Cauvery Family did try to develop scenarios of water use by using the Water Evaluation and Planning System – a hydrology model developed in the Boston centre of the Stockholm Environment Institute. It also developed certain water sharing formulae for further discussion and negotiation. But that was the time when the tribunal gave its final award and with it, in a way, the Cauvery Family also ceased to function. Perhaps one way to move forward is to re-activate and strengthen the Cauvery Family or a similar platform and see what could be the long-term solution to this dispute, especially in the case of distress years. Here, academic institutions and civil society organisations can play an important role. There are many good institutions and organisations working on water issues in almost all states. They need to come together, and through their research and advocacy, make the public discourse on water more informed and participatory. Doing so will help make these conflicts more tractable. This could give rise to Cauvery Family type of initiatives. There is also a need to find formal and legal spaces for such initiatives so that the decisions and agreements reached in such forums become binding. However, under the present circumstances of violence, intimidation, fear and street justice nobody wants to stick their necks out. There is a virtual institutional vacuum at different scales like micro-watershed, sub-basins and basins for negotiated settlements around water allocation, and for conflict resolution. Though the different water polices have been talking about river basin organisations there is nothing on the ground. This is all the more important in the case of inter-state water conflicts – we need institutions that cut across administrative and political boundaries and can engage with the sub-basins and basins as integrated hydrological entities. In fact, we need democratic, multi-stakeholder platforms for every sub-basin and basins in the country that are legally mandated. International experience tells us that wherever such basin organisations have been working they have been able to manage disputes and conflicts. The Mekong River Commission is a good example of this. Though China, an upper riparian country and also geopolitically more powerful than the rest of the riparian countries, is not a member of the Mekong River Commission, the commission has been able to function quite well. Similarly there are good experiences around multi-stakeholder platforms in the water sector, especially in some western countries like the US where these platforms have been able to solve conflicts and contestations. Multi-stakeholder platforms informed by academic inputs are important, legally-mandated institutions that deal with dam removals in the US. We need to learn from such experiences to craft democratic institutions that represent all interests to resolve our water conflicts through negotiations. Sharing of real time data is a precondition for such efforts to succeed. First published by

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