

**THE CAUVERY RIVER WATER DISPUTE, IN  
THE CONTEXT OF INDIA'S EXPERIMENT  
WITH FEDERAL COALITIONS**

*Dissertation submitted to the Jawaharlal Nehru University in  
partial fulfilment of the requirements for the award of the  
degree of*

**MASTER OF PHILOSOPHY**

**P. ANITHA**

**CENTRE FOR POLITICAL STUDIES  
SCHOOL OF SOCIAL SCIENCES  
JAWAHARLAL NEHRU UNIVERSITY  
NEW DELHI-110067**

**INDIA  
1999**



जवाहरलाल नेहरु विश्वविद्यालय  
JAWAHARLAL NEHRU UNIVERSITY  
NEW DELHI - 110067

## CERTIFICATE

Certified that the Dissertation entitled “**THE CAUVERY RIVER WATER DISPUTE, IN THE CONTEXT OF INDIA’S EXPERIMENT WITH FEDERAL COALITIONS**” submitted by **P. Anitha**, is in partial fulfilment of the requirements for the award of the degree of **Master of Philosophy** of this University. This dissertation has not been submitted for any other degree of this University, or any other University and is her own work.

We recommend that this Dissertation may be placed before the examiners for evaluation.

**Prof. Kuldeep Mathur**

Chairperson

**Dr. Sudha Pai**

Supervisor

**CHAIRPERSON**  
**Centre for Political Studies**  
**School of Social Sciences-II**  
**Jawaharlal Nehru University**  
**New Delhi-110067**

GRAM : JAYENU TEL. : 667676, 667557 TELEX : 031-73167 JNU IN

## **ACKNOWLEDGEMENT**

I would take this opportunity to express my thanks to **Dr. Sudha Pai**, my supervisor for her valuable guidance and advice.

I would also like to acknowledge my gratitude to the teachers at my Centre who are always helpful.

My sincere thanks to the staff of the Jawaharlal Nehru University Library, New Delhi; the Nehru Memorial Library, New Delhi; the Centre for Policy Research, New Delhi; ICSSR Library, New Delhi, for their cooperation and assistance.

I want to thank all my friends for encouraging me at different stages of my work.

In making this dissertation presentable my thanks to Praveen, Kaushal, Mala Graphics, who put in their best to finish the work on time.

**P. Anitha**

## TABLE OF CONTENTS

	Page No.
<i>Acknowledgement</i>	<i>i</i>
<b>Chapter 1 : Introduction</b>	<b>1-14</b>
<b>Chapter 2 : Cauvery-A Politico-Historic Backdrop</b>	<b>15-40</b>
<b>Chapter 3 : The Cauvery Dispute in the Context of Coalitions in the 90s</b>	<b>41-55</b>
<b>Chapter 4 : Changing Federal Equations in the 90s and the Cauvery Dispute</b>	<b>56-67</b>
<b>Chapter 5 : Conclusion</b>	<b>68-74</b>
<b>Bibliography</b>	<b>75-79</b>
<b>Appendix</b>	

**Chapter - 1**  
**INTRODUCTION**  
**SECTION - I**

Past fifty years into existence as an independent nation, India's institutional structures of governance-its federal framework, party system, etc. have been undergoing massive changes in their functioning. One of the important areas which have occupied the centristage of current debate and discussion has been the issue of inter-state disputes.

Inter-state disputes are a common place occurrence in any functioning federal system. Disputes over territory, water, etc. have been quite a few, since the reorganization of states in 1966 and even before, there have been disputes between the entities that existed before that.

However, the handling of disputes that appeared between India's federal units has depended upon the existing federal equation- both centre-state and inter-state, which inturn has been profoundly influenced by the nature of the party system prevalent in the country.

There has been a continued reconfiguration of India's party system. The first phase, that of the 'Congress System'<sup>1</sup> lasted the first two decades after independence. The second phase, which may be called the 'Congress-

---

<sup>1</sup> Kothari, Rajani., Politics in India, Orient Longman, New Delhi, 1970, p 183.

Opposition' system, was still characterized by one party salience, though no longer dominance, of the congress<sup>2</sup>. The third phase, which began with the assembly elections of 1993-1995, definitely signals a move towards a competitive multiparty system, which can be no-longer defined with reference to the Congress<sup>3</sup>. There has in fact been a 'regionalisation of the polity'. While for two decades after independence, the Congress occupied a position of dominance at both the national level and in nearly all of the states, there has emerged in recent years, a region-based multi-party system, where , all the important all-India parties compete for power at the centre, but do not have a base in a majority of the regions of the country, as the Congress had in the Nehruvian era. Competitive party systems have emerged in the states, distinct from, but closely related to the national system. This is qualitatively different from such federal democracies as the United States, where two national parties with a presence in all the states compete for power at the centre and no regional parties have any presence at the national level. In India the all-India parties are limited to specific regions and an competing for power at the centre. National parties like the Congress have been confined to a few states, where it has managed to retain its social base. The BJP and the components of the UF have identifiable regional bases, built over a considerable period of time. At the same time, such

---

<sup>2</sup> Yadav, Yogendra, 'Reconfiguration in Indian Politics-State Assembly Elections, 1993-95', Economic and Political Weekly, January 13-20, 1996, p 95.

<sup>3</sup> Ibid, p 95.

regional parties, which have been totally born and bred in specific regions as Assam, Tamil Nadu, Andhra Pradesh as Assam Gana Parishad (AGP), All India Anna Dravida Munnetra Khazagam (AIADMK), Dravida Munnetra Khazagam (DMK) have increasingly come to play an important role in government – formation at the centre in particular, and in national politics in general.

This has brought about a Coalition –era in Indian politics, which is unique because of the participation of regional parties in such governments. The term ‘Federal Coalitions’ is increasingly being used to describe this unique reflection of India’s federalism in its coalitions. Beginning with the National Front Government in late 80s, the United Front Government in early 90s, and now the BJP- led 18 – party government, the coalition era has established itself in the Indian polity.

This has profoundly affected Indian federalism in its functioning. The Indian federal scheme was profoundly influenced by the dominance of the Congress, at both the national level and nearly all of the states. It operated as a political machine, or, more precisely, as a cluster of state-level political machines<sup>4</sup>. As a result, the Congress Party, in its period of dominance performed many of the functions, which are normally left to

---

<sup>4</sup> Manor, James., ‘Regional Parties in Federal Systems: India in Comparative Perspective’, in Arora, Balveer and Verney, Douglas (ed.), Multiple Identities in a single state – Indian Federalism in Comparative perspective, Kanark Publication Pvt. Ltd., New Delhi, 1995, p 105.

formal state institutions in the west<sup>5</sup>. Despite the centralized federal scheme, it was political management through accommodation through informal party channels, which made the federal machine run smoothly and hence acted as a necessary corrective. However, this was responsible for the failure of institutionalized mechanisms of cooperative federalism to develop. Inter governmental fora such as the National Development Council, CMs Conference, Zonal Councils, National Integration Council, were non-functional and were merely meant to be fora for reaffirmation of loyalty to the leaders. However, in a changed political scenario, When such an all-accommodating political entity that smoothed inter-governmental relations ceased to exist, and the voices of states defending their seemingly legitimate interests have risen and their voices can no longer be muffled arbitrarily, as regional parties now play a crucial role in government formation at the centre, inter-state disputes have become intractable and difficult to settle.

One such issue that has rocked the polity in recent times has been the Cauvery Dispute, between the states of Tamil Nadu and Karnataka. Karnataka is the upper riparian state, while Tamil Nadu is the lower riparian state. The Agreement of 1924, between these two states has been the basis of water-sharing between them all along. It basically imposed restrictions on the use of the Cauvery waters and on the on the area cultivated in the two

---

<sup>5</sup> Manor, James, op. cit., p 109.



states. The Agreement was to be reviewed in 1974. Karnataka has held that it completely rejected the 1924 Agreement, and demanded a de novo approach to the optimum utilization of waters of the Cauvery, eliminating the regional imbalances fostered by the agreement<sup>6</sup>. And has gone ahead with new schemes to expand its area under irrigation. Tamil Nadu, as the lower riparian, feels threatened because, its long-established irrigated agriculture based on a substantial use of the Cauvery waters, with a century-old history behind it, is now vulnerably dependent upon diminished and diminishing flows, as a result of upstream development<sup>7</sup>. In years of inadequate rainfall, Tamil Nadu is increasingly having to seek small releases from Karnataka and to request central intervention whenever it has failed to secure such releases. This dependence on goodwill releases by Karnataka has put Tamil Nadu in an uncertain position and so it has sought a clear recognition of its legal right to the Cauvery waters. It has therefore taken a legalistic stand on past agreements and on the principle of prescriptive rights arising from prior appropriation.

Thus, each state has taken a stand on what it consider its rights: Karnataka asserts an unqualified right to the use of Cauvery water for the

---

<sup>6</sup> Basu, Chirosee, 'Breach over troubled waters', The Telegraph (Calcutta), 9 February, 1996.

<sup>7</sup> Iyer, R. Ramaswamy., The Cauvery Dispute, Centre for Policy Research, 1995, p.8 (Unpublished).

benefit of its farmers, while TN keeps on insisting on its right to historic flows and the permanence of the 1928 agreement<sup>8</sup>.

The Cauvery Water Disputes Tribunal was appointed in 1990 to look into the question. The Tribunal gave an interim order on a plea by the states of Tamil Nadu and Pondicherry, in 1991. This itself became the source of a secondary dispute between the two states<sup>9</sup>. Repeated rounds of negotiations between these states continued to take place, with no amicable settlement though. The nature of the political dispensation at the centre and the concerned states was a major factor influencing the course and tenor of the dispute that kept flaring up whenever there was a scarcity in the flows. Finally, it was at the behest of the Supreme Court, that in August 1991, the Prime Minister convened a meeting of all the basin states of the Cauvery, at which an agreement was arrived at on the issue of the Tribunal's orders, in a spirit of give and take.

Though the Cauvery River Water Dispute is like any other inter-state dispute, it is unique and interesting because, it has a very long history and because it has reached its climax at a very critical juncture in Indian politics.

---

<sup>8</sup> Ibid, p 8.

<sup>9</sup> Iyer, R. Ramaswamy, op. cit., p 3.

## SECTION - II

The issue of river water sharing has become a major issue of focus in India's federal polity. River Water Disputes create legal socio-economic and political problems for the concerned states. Disputes over such a crucial resource as water have affected its optimum utilization, and hence the livelihoods of those dependent upon it. "Federalism is not just a matter of arrangement of legislative and demonstrative relationships between the Union and the states, nor merely a matter of so-called comparative patterns of federal adjudication. The federal idea and ideal, subsuming these aspects, is above all, about equitable development and the most just uses, of available resources for that kind of development which disproportionately benefits the impoverished"<sup>10</sup>. However, this issue has remained confined to legal circles and political circles whenever problems cropped up. A full understanding of inter state water disputes is conspicuous by its absence in Indian curricula and research<sup>11</sup>.

Little work has been done in this important area and here follows a cursory perusal of the important work that has been done.

---

<sup>10</sup> Baxi, Upendra in Foreward to, Chauhan B.R. Water Project Series, Settlement of International and Inter state water Disputes in India. Indian Law Institute, N.M. Tripathi Pvt. Ltd., Bombay, 1992.

<sup>11</sup> Ibid,

Under the Water Project Series of the Indian Law Institute, B.K. Chauhan's work titled, "Settlement of International and Inter-state Water Disputes in India" is an important work in this area.

The author states at the outset that his work has been carried out with the hope that a scientific treatment of the problem will make a reasonable contribution towards a solution of the problems involved, and accelerate the pace of development. Juristic works, taken as a whole do not make available, any crystallized legal norms or principles to be readily applicable in the settlement of inter-state River Water Disputes in India<sup>12</sup>. He examines the significance of water, the significance and scope of the problem of sharing water. It examines theories invoked at the time of settling disputes such as-the Doctrine of Riparian Rights, Prior Appropriation Theory, Territorial Sovereignty Theory, Natural Water Flow Theory, Equitable Apportionment Theory, etc. It underlines the need for correlated research in a number of fields to help give material for technicians, experts, statesmen and governments to enable them to tackle them. He goes on to give a description of inter-state rivers, their basins, in a historical survey. Sources of Law for Inter State River Water Disputes are studied. He makes a survey of such disputes and their resolution in various polities, both federal and non-federal, then goes on to examine some of the disputes in India and ends

---

<sup>12</sup> Chauhan B.R., op. cit., P. 181.

with a statement of the guiding principles which have emerged in India, in the resolution of inter-state River Water Disputes and an elaborate list of suggestions and recommendations, mainly procedural, in resolving such disputes.

Another important work in this connection is by M.V. Ramana by the title, "Inter-state River water Disputes in India". It is basically a survey of the history of river disputes in India. It examines in detail, the Krishna-Godavari and Cauvery Disputes. On the question of 'equitable apportionment', which has often been advised as a easy way out of inter-state disputes over water, he quotes the Bachawat Tribunal's observation that "the concept of equitable apportionment does not lend itself to precise formulation, as no mechanical formula exists. However, equitable apportionment, in the opinion of the Tribunal members, involves many variable and important factors as the hydrological, climatic and physical characteristics of the river basin, the volume of the available supply, diversions and the return flow, the statewide drainage area., etc"<sup>13</sup>. He discusses the principles of river water distribution, across the world, both international and inter-state, including India. He discusses the novel experiment of the autonomous Damodar Valley Corporation, carried out along the lines of the Tennessee Valley Corporation in the US for the

---

<sup>13</sup> Ramana, M.V., Inter-State River Water Disputes in India, Orient Longman, New Delhi, 1992. p 15.

multipurpose development of the region lying along the Damodar. But this effort failed due to the strained relationship between the concerned states and the corporation. The Centre could not exercise powers, despite being vested with statutory authority and hence a decision was taken not to establish any more such river development corporations.<sup>14</sup> He discusses some other methods by which inter-state river water disputes have been attempted to be solved among the world's successful federal systems. He says that "the facts available from various studies indicate a general trend among riparian states towards settlement. However, the successful methods adopted abroad cannot be applied to Indian conditions". Therefore, specific models suited to Indian conditions need to be evolved, he adds. He discusses the two important modes of resolution of inter-state river water disputes, by judicial settlement and by political agreement between the states. Both have their limitations and advantages. While political agreements are entered into by political leaders who actually implement them, they become problematic when their successors do not accept the underlying principles. Whereas judicial decisions lack popular acceptance as there is no representative involvement of the people. Also, he says that the most viable method is direct negotiations between the parties concerned. A court, he argues, can not settle controversies for all times to come. He arrives at the conclusion that "Examples show that negotiated settlement of disputes is better.... but

---

<sup>14</sup> Ramana, M.V., op. cit., p 67-68.

negotiations have their own limitations and in the case of continuous failure of negotiations, the issue has to be referred to an alternative forum – Tribunal or a Supreme Court”<sup>15</sup>.

A pioneering work in the field of inter-state river water disputes, and specifically on the Cauvery Dispute has been by S. Guhan. Called “The Cauvery River Water Dispute: Towards conciliation”, it is a holistic account of the Cauvery dispute, including its historic, political dimensions and suggesting a possible way to its resolution.

He states that, the Cauvery dispute is distinct and complex, compared to the other major river water disputes in India. While these disputes were mainly about the inter-state utilization of hitherto untapped surplus waters, the dispute over the Cauvery relates to the resharing of waters that are already being almost fully utilized in their totality<sup>16</sup>. He discusses the genesis of the problem, attempts made over the years for the resolution of the dispute and the role of political players who were involved in its resolution. He is of the opinion that “... the unduly protracted nature of the negotiations itself was responsible for widening the gap (between the contending states). What was missing in essence was an effort to mediate and conciliate differences between in Karnataka and Tamil Nadu, during the

---

<sup>15</sup> Ramana, M.V., op.cit., p 79.

<sup>16</sup> Guhan, S., The Cauvery Dispute: Towards Conciliation, Kasturin and Sons (Madras), 1993 p 5.

process of negotiation<sup>17</sup>. This he feels could have been done only by the Government of India, but this, it failed to do in a sustained manner. He discusses the work done by the Cauvery Water Disputes Tribunal. He goes on to discuss how river water disputes in general have been sought to be settled, and makes a study of the principles, law and practice, both internationally and intra-nationally. He discusses the machinery available for such dispute resolution in India, and observes that, "A fundamental deficiency in the Indian river dispute settlement procedures is that they jump directly from negotiations to compulsory legal adjudication without providing for intermediate voluntary processes such as mediation, conciliation and voluntary arbitration"<sup>18</sup>. He suggests the acceptance of the Helsinki Rules as the framework for the resolution of these disputes. A path of conciliation alone can help, he believes. He also suggests a role for technical experts from the basin states in formulating any sustainable solution. Finally, it is the duty of the leaders of both the states, who should rise to the occasion and arrive at a mutually agreeable solution, he concludes.

"The Cauvery Dispute", by R. Ramaswamy Iyer, published by the Centre for Policy Research is an important unpublished paper, which contributes to the literature on this subject. He focuses mainly on the current

---

<sup>17</sup> Guhan, S., op. cit., p 35.

<sup>18</sup> Guhan, S., op. cit., p 56.



controversy over the issue and observes that, “the Tribunal’s interim order has itself become the subject of a secondary dispute between the two state”<sup>19</sup>. Discussing an approach to possible resolution, of the dispute, he suggests that, “the constitutional adjudication process must be allowed to proceed as quickly as possible, to a conclusion”<sup>20</sup>. Simultaneously, he says, though negotiations at the governmental level have failed in the past and many fail again, if a group of eminent persons, commanding respect in both the states could undertake such an effort, it might be possible to bring the governments round eventually. If the group is able to persuade the parties to accept a settlement, then the agreement can be reported to the Tribunal and converted into an award, thus giving it statutory backing. He also emphasizes the need for campaigning by persons of goodwill in both the states to rescue public opinion from the short-sighted calculation of political parties.

Another notable work in the area of water resources, though a little dated, is by K.L. Rao, called “India’s water wealth, its Assessment, uses and projections”. It makes an incisive study of the criteria of water allocation – Helsinki Rules, inter-state water dispute settlement in India, examples from other countries, basic issues to be resolved, machinery for dispute resolution, UN recommendations, etc. He traverses the arena of the idea of a National

---

<sup>19</sup> Iyer, R. Ramaswamy., op. cit., p 2.

<sup>20</sup> Iyer, R. Ramaswamy., op. cit., p.9.

Water Grid, inter-basin transfers through, say a link such as the Ganga Cauvery Link, Brahmaputra – Ganga Link, and sees it as an effective way of solving disputes over inter-state waters<sup>21</sup>.

All the above mentioned literature has as its focus, disputes over water sharing, and their settlement models with a differential emphasis on either a legalistic solution or a negotiated settlement. Some are historical, comparative in their scope and some focus on arriving at some guiding principles that could help the resolution of such disputes. The role of actors involved in the disputes, and the political dynamics within which such disputes occur are studied only cursorily.

My work, focusses on the political context in which a dispute such as the Cauvery has occurred. It attempts to locate the Cauvery Dispute in the context of the changing political party system, the resulting coalitions and its consequences for inter-state and centre-state relations. This work seeks to throw new light on the Cauvery Dispute, in this context. At the same time, it seeks to understand the context itself better.

Primarily, secondary data in the form of commentaries, monologues, books, newspaper and magazine articles has been used in the writing of this work.

---

<sup>21</sup> Rao, K.L., *India's Water Wealth, Its Assessment, Uses and Projections*, Orient Longman, 1979. p. 229.

## **Chapter-2**

# **CAUVERY-A POLITICO-HISTORIC BACKDROP**

## **SECTION - I**

Rivers do not respect political boundaries. In India most river systems cut across state boundaries and the regulation and development of waters of these rivers have been causing and continue to cause inter-state disputes.

The Cauvery River Water Dispute has become such a contentious one in recent years that it has become the sin quanon of the need for better management of inter-state equations within India's federal system. The inter-state dimension of India's federal structure has come into focus, alongside the long standing focus on centre-state relations. The federal balance among the states and between centre and states has been rocked.

### **THE DISPUTE**

Known as 'Dakshin Ganga', it is the fourth longer river in India and flows through the South Indian States of Kerala, Karnataka, Pondicherry and Tamil Nadu Rivers in general are a part of local folklore and generate strong feelings, including a sense of possessiveness. The Cauvery too is a holy river and evokes strong sentiments all along its course.

## **FACTS ABOUT THE RIVER**

### **Drainage Area**

Karnataka	:	34,273 Km <sup>2</sup>
Tamil Nadu and Pondicherry	:	44,016 Km <sup>2</sup>
Kerala	:	2,866 Km <sup>2</sup>

### **Net Irrigated Area**

Karnataka	:	11.2 lakh acres
TN, Pondicherry	:	28 lakh acres
Kerala	:	Marginal acentage

### **Net cropped area (under the drainage area)**

Karnataka	:	42.2%
Tamil Nadu and Pondicherry	:	47.3%
Kerala	:	39.6%

### **Number of Districts in the Cauvery basin**

Karnataka	:	8
Tamil Nadu and Pondicherry	:	11
Kerala	:	3

## **HISTORY OF THE DISPUTE**

The Cauvery Dispute centered over the sharing of waters is a century old, beginning from the days of the former state of Mysore and the State of Madras. In 1892, an agreement was entered into between the then Mysore and Madras Governments. Entitled 'Rules defining the limits within which

no new irrigation works are to be constructed by Madras state without previous reference to the Mysore Government'<sup>1</sup>. This Agreement imposed restriction on both Madras and Mysore and amounted to a limitation on some of the rights of Mysore as an upper riparian state. Clause 2 of this Agreement reads, (‘The Mysore Government shall not without the previous consent of the Madras Government or before a decision under Rule for ..... build (a) any new irrigation reservoirs across any part of the 15 main rivers..... ‘<sup>2</sup>’)

Thus, the origin of the current dispute can be traced back to this agreement. Even at that time, the Madras Government raised objections to a new irrigation project proposed by the then Mysore State. It was the contention of the Madras Government, that Madras farmers had acquired casementary rights over Cauvery waters, by prescription, from the times of the Cholas, who had built an excellent irrigation system in the Thanjavur delta. The Government of Mysore protested against this doctrine of prescriptive rights and held that the user in question was permitted to do so only so long as the state did not wish or was unable to store more water. A strange fail about the 1892 Agreement was that, the lower riparian state was given veto power over all the irrigation works of an upper riparian state.

---

<sup>1</sup> Ramana, M.V., Inter State River Water Disputes in India, 'Orient Longman, 1992, p 39.

<sup>2</sup> Ibid, p. 39.

whether or not it suffered any damage<sup>3</sup>. The factor which made Mysore state accept such an agreement was it being under the control of a British Resident !.

### **THE 1924 AGREEMENT**

[ In 1909, when the Mysore Government proposed to construct the Krishna Raja Sagar across the Cauvery, the Madras Government objected due to fears that the Tanjavur delta would get affected. As per the Agreement of 1892, the dispute was referred for arbitration and an award was given in 1924, favouring Mysore. However, an appeal by the Madras Government against the award to the Secretary of State of India led to fresh negotiations and the Agreement of 1924. ]

According to this Agreement, the state of Mysore was entitled to extend irrigation to the extent then fixed at 1,10,000 acres in Mysore. The extension was to be carried out by means of reservoirs to be constructed on the Cauvery and its tributaries. Mysore was allowed to enjoy the surplus due from Krishna Raja Sagar Dam, while Mettur in Tamil Nadu was allowed to store what was released by the flow arrangement of the 'rules of regulation'. This Agreement was to be reconsidered in 1979 in the light of experience gained and of the possibilities of further extension of irrigation facilities in these two states. The Agreement also provided for the settlement of disputes

---

<sup>3</sup> Ramana, M.V., op. cit., p. 40

regarding interpretation of the Agreement through arbitration by the Government of India, if both the parties agree. The Agreement was to hold for 25 years.

After independence, problems began to brew. Karnataka objected to Tamil Nadu taking up new projects on the Cauvery. It held that the 1924 Agreement did not permit the Madras Government to construct new irrigation works on the main river and develop irrigation beyond the limit of 3,01,000 acres in the main river basin. The most important objection was that as the 1924 Agreement was due to be revised in 1974, any new uses Madras might put the river to might create prescriptive rights in favour of Madras and prejudice its own case at the time of revision.

The crux of the dispute lies in the complete rejection of both the 1874 and 1924 agreements by Karnataka, and demand for a de novo approach in finding a way for optimum utilization of waters of the Cauvery, eliminating regional imbalances fostered by the Agreement<sup>4</sup>. Its rejection is based on the ground that these were imposed by a colonial government, which made Karnataka's irrigation substitute to the interests of Tamil Nadu. It is maintained that while 75% of the catchment area of the Cauvery Basin lies within Karnataka's territory, only 11.5 lakh hectares of land has been

---

<sup>4</sup> Basu, Chiroosree, 'Breach over troubled waters', The Telegraph (Calcutta), 9 Feb. '96.

irrigated under it and the comparable figures for Tamil Nadu stands at 18 lakh hectares<sup>5</sup>.

The 1924 Agreement expired in 1974 and since then efforts to resolve the dispute under the aegis of the Central Government are on. In the meantime Karnataka stopped adhering to the Agreement's provisions.

Initiative to set up the Cauvery Valley Authority was made by the Government of India in 1976. It was to collect data about availability of waters at various points, regulate supplies according to the provisions of the draft Agreement; scrutinize schemes for achieving savings; monitor the progress of such schemes and apportion such savings to the states on the basis stipulated in the Agreement. However, all these efforts came to nought.

A fresh round of the dispute began with vigour in 1983, when the Society for the protection of the Irrigation and Agricultural Rights of the Tamil Nadu farmers of the Cauvery went to court making the Government of India, the Government of Tamil Nadu and the Government of Karnataka, the respondents. The petitioners held that they were entitled to the lower riparian rights of the Cauvery for cultivating their lands over the years. They alleged that the inflow into the Cauvery at the Mettur Dam Point and downstream had diminished considerably due to the construction of new dams, reservoirs, projects across the River Cauvery and its tributaries by

---

<sup>5</sup> Verghese, B.G., Indian Express (Delhi) 13 August, 1996.



TH-8154

DISS  
333.9100954  
P1 Ca



TH8154

Karnataka within its boundaries. Attempts to resolve the problem through bilateral and multilateral talks for a negotiated settlement had not succeeded and so the petitioners demanded relief Karnataka filed an affidavit opposing the maintainability of the petition as also the tenability of the plea for relief. The Union of India and the Ministry of Water Resources also opposed the maintainability of the plea relying upon section 11 of the Inter State Water Disputes Act of 1956, which states, "..... notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a tribunal under this Act. "However, the Supreme Court overruled these objections and allowed the petition. It directed the Central Government to fulfil its statutory obligation under Inter State Water Disputes Act of 1956 by constituting a Tribunal for adjudication of the dispute. The Central Government, accepting the Courts direction, constituted the Cauvery Water Dispute Tribunal by a notification dated 2 June 1990. It was headed by retired Chief Justice of Bombay High Court Mr. Chittatosh Mukherjee and Mr. Justice N.S. Rao. The Court itself, had ordered such a recourse only when repeated dialogue between the contending parties proved inconclusive.



In the interim period, the Governments of Tamil Nadu and Pondicherry sought an order from the Tribunal for interim relief pending the final orders of the Tribunal. The Tribunal held that petition were not

maintainable as they were beyond the jurisdiction of the Tribunal constituted under Inter state Water Dispute Act of 1956. It held that it should confine itself to what had actually been referred to it and couldn't consider any other aspect unless that too had been referred to it. The Governments of Tamil Nadu and Pondicherry approached the Supreme Court with a special leave petition against this. The Supreme Court expressed doubts about its jurisdiction to issue orders on the petitions and refused to do so. However, later, it allowed the petitions and on 26 April 1991, it allowed the appeals and set aside the Tribunal's decision of 5 January 1991 and directed the Tribunal to judge the petition on their intrinsic merits.

The Cauvery Water Disputes Tribunal passed a second order on the interim relief sought by the Governments of Tamil Nadu and Pondicherry on 25 June 1991. The Tribunal directed Karnataka to release 205 tmcft of water in a water year, taking the average inflow into consideration. This was to be done annually, pending the final settlement of the dispute. It even directed Karnataka not to expand the area under irrigation using Cauvery water (11.2 lakh acres at the time). The Tribunal took note of Tamil Nadu's grievance that not only the total volume of water from Karnataka, flowing down to Mettur was becoming less and less', but 'the releases were not being made timely to meet the needs of cultivation of crops, particularly in the Cauvery delta'. Accordingly, the Tribunal laid down a monthly schedule for releases.

Karnataka objected to the order on several grounds.

- The quantum of 205 tmcft. For inflows at Mettur was considered excessive.
- The assurance of this quantum to Tamil Nadu subject to a stipulated pattern of monthly releases, it said, did not take note of varying availabilities in yield between normal and lean years or monthwise within a year.
- Also, the reference period for the monthly pattern of releases, it claimed, was inconsistent with that for the annual quantum.
- Most importantly, it resented the area restriction of 11.2 lakh hectares placed on Cauvery irrigation in Karnataka.

Karnataka perceived the Interim Order as a continuation of the conspiracy of 'historic discrimination in respect of the whole issue of Cauvery waters.

Karnataka more understandable anxieties relate to the monthly pattern of releases. In stretches in which supplies from its own catchments prove to be inadequate, adherence to the monthly pattern stipulated by the Tribunal will mean reduced availability to Karnataka itself. And the Tribunal has not quantified or given any precise definition to such key

expression as “ ‘undue hardship’ in yeas of ‘distress’ to be borne equitably by both the state in a ‘pro rate’ manner” !.

An emergency Legislative session in Bangalore unanimously rejected the Interim Order, while the Tamil Nadu Assembly unanimously urged the centre to gazette the Interim Order. Karnataka followed it up with an Ordinance to protect the irrigation in the Cauvery basin. The centre was caught in a piquant situation as it precluded any move by the centre to force the state government to implement the Tribunals order. The centre made a presidential reference to the Supreme Court. The Court ruled that the ordinance was beyond the legislative competence of the state and so unconstitutional. The centre was directed to notify the order and it stated that a Water Disputes Tribunal was competent to grant any relief. The centre got the order gazetted. Tensions flared up and the Karnataka Government called for a bandh. Tamil Nadu Government too called for a bandh in protest. An all party meeting in Tamil Nadu called upon all MPs from Tamil Nadu to resign in protest. Karnataka, having rejected the Tribunals interim orders has continued with its irrigation projects. The Government of Karnataka has gone ahead without central assistance, in executing Cauvery basin projects, as the centre refused funds for any new projects unless the disputes on sharing of river water among Karnataka, Tamil Nadu, Kerala and

Pondicherry are resolved<sup>6</sup>. Karnataka has been funding these under non-plan heads. The interregnum passed off without much being done, as a bountiful monsoon had cooled tempers and the needs of both the states were met without much of a problem.

The problem cropped up again in 1993 as water flows were not enough for the standing paddy crop in the Tanjavur delta. Jayalalitha, the Chief Minister of Tamil Nadu went on a fast demanding water to save the crop. She demanded the immediate implementation of the Tribunal's Interim Order. Tamil Nadu wanted the centre to give a directive under Art. 256 of the Constitution to honour the Tribunal's order. The Centre gave an assurance to appoint a set of committees to oversee the situation and monitor flows so as to protect the interests of both the states.

There was a repetition of the situation again in 1995, when the state of Tamil Nadu went to the Supreme Court demanding water from Karnataka to save the standing crop. The Supreme Court asked the Prime Minister to intervene. Ultimately 5 tmc ft of water was released by Karnataka in accordance with the distress-sharing formula of the Tribunal. As a back up measure, a Committee of Experts was appointed by the Prime Minister. Its terms of reference included inspecting the Cauvery basin in both the states, assessing the size and extent of standing crops affected for want of water and quantity of water required to save Tamil Nadu's crop and at the same

---

<sup>6</sup> Rao, Gundu N.C., 'Politics outbeats natural crisis – Gunder Rao, The Deccan Herald, 2 Jan. '96.

time protecting the standing crops in Karnataka. The problem was solved on an adhoc basis but no long term solution could yet be achieved.

## **RECENT DEVELOPMENTS ON THE CAUVERY ISSUES**

Prime Minister Atal Behari Vajpayee convened a meeting of the Chief Ministers of Tamil Nadu, Karnataka, Kerala, Pondicherry on August 6 and 7, 1998 at New Delhi. In what appears to be a climbdown on its part, Karnataka<sup>7</sup>, for the first time since the Cauvery Water Disputes Tribunal gave an Interim Award, agreed at the Delhi meeting that there could be a scheme for giving effect to the Interim Award and all related orders issued subsequently. All along Karnataka had opposed the Tribunal and the Interim Award and wanted a National Water Policy to determine the ground rules for water sharing with respect to all inter-state rivers.

A draft scheme was framed in May 1997 under section 6 of the Inter State Disputes Act, The scheme, which proposed the creation of an infrastructure for the implementation of the Interim Award was sent to all the basin states for approval. Karnataka strongly opposed the scheme on the grounds that it put unfair restrictions on the state's access to water. Tamil Nadu welcomed the scheme. However, no consensus could be reached. This was done at the behest of the Supreme Court's directions regarding the need to frame a scheme for the implementation of the Interim Award. The Court

<sup>7</sup> River water issues: And Quiet flows the Cauvery, Frontline, August 28, 1998.

at a later hearing gave the Government time upto August 12 to try and resolve the issues relating to the framing of the scheme. It was in line with these directives that the August 6-7 meeting was held. The scheme agreed upon has since been notified.

A Cauvery Valley Authority would be created, comprising the Prime Minister and the Chief Ministers of Karnataka, Kerala, Pondicherry and Tamil Nadu. The Authority shall frame rules and regulations for the conduct of its business. The Authority has been constituted with the basic purpose of giving effect to the implementation of the Interim Order of 25 June, 1991 and all other related subsequent orders of the Cauvery Water Dispute Tribunal.

- A Monitoring Committee, with Union Water Resources Secretary as its Chairman and Chief Secretaries, designated officers of the four riparian states and the chairman of the Central Water Commission as members, is to assist the River Authority in monitoring the implementation of its decisions. It shall meet atleast once in three month.
- The Monitoring Committee shall also assist the Authority in setting up a well-designated hydro-meteorological network in the Cauvery basin along with a modern communication system for transmission of data and a computer-based control room for data processing to determine the hydrological conditions.

- All expenditure incurred by the Authority shall be borne by the Central Government till the issue is settled among the states.

On August 12, 1998, the centre submitted before the Supreme Court, the notification of the Cauvery scheme. A three member Bench of the Supreme Court, while expressing satisfaction over the scheme, directed that the matter relating to the Cauvery case be placed before a 5-judge Constitution Bench on August 17, 1998. On August 17, the 5-judge bench headed by the Chief Justice of India disposed of Tamil Nadu's suit, after the counsel for Tamil Nadu, Government expressed 'no objection' to the closing of the suit in view of the notification of the scheme.

Both the states of Tamil Nadu and Karnataka have shown a spirit of accommodation. While Tamil Nadu has accepted a considerably enfeebled Monitoring Committee instead of a Committee empowered to implement the Interim Award, Karnataka from a position of rejecting the draft scheme in toto, has now accepted it, though with conditions. Karnataka's demands on the function of the Monitoring Committee have been fully met : the

C



Two major contentious issues about the Tribunal's Interim Order have been - (I) determination and quantification of 'distress' in a given situation, as the problem here is one of sharing scarcity than of surplus. (2) The point at which the supply to Tamil Nadu should be measured, whether at Mettur as Tamil Nadu says or at Billigundlu upstream of Mettur as Karnataka says.<sup>8</sup> After the notification of the draft scheme, an official mechanism is now in place for the sharing of distress in a year of water scarcity. This solves one major problem, which could now facilitate the untying of other knots which make the issue intractable.

## **AN OVERVIEW**

From 1910 to 1924, strong mutual interests came to be established and maintained between Mysore and Madras because of the conjuncture of the Kannambaddi dam in Mysore and Mettur projects in Madras. This acted as a spur to the Agreement of 1924.<sup>9</sup> In the current Cauvery Dispute, there has been no such reciprocity of interests. Karnataka and Tamil Nadu have adopted mutually antagonistic positions. While Tamil Nadu wanted to maintain the status quo of the 1924 Agreement, Karnataka repudiated it as soon as the year 1974 approached. There was a divergence of interest between Karnataka and Tamil Nadu even on the question of pursuing

---

<sup>8</sup> 'The costs of Politicisation', *The Hindu (Madras)*, 22 December, 1995.

<sup>9</sup> Guhan, S. *The Cauvery Dispute : Towards Conciliation*, Kasturi & Sons (Madras), 1993, p. 33

negotiation. Tamil Nadu was all for reference to a Tribunal, but at the same time, participated in negotiation upto 1990, in the hope of attaining some break through. But, when from 1978, differences began to widen, Tamil Nadu retracted, reiterating its stand based on the 1924 Agreement. On the other hand, Karnataka was uncomfortable with negotiations and wanted them to remain inconclusive. It was not in favour of reference to a Tribunal, either. "Through such a strategy, the state gained time to proceed with the completion of its new projects and the development of ayacut and utilisation under them"<sup>10</sup>. While the 1921-24 negotiations were concentrated and purposeful, the 1968-90 talks were prolonged and fitful. Except during 1972-76, the Ministerial meetings were atmost invariably desultory 'parleys' rather than meaningful negotiations, they were held at irregular intervals for a day or two on each occasion. These meetings were not followed up by technical exercises at any level. The only exceptions were the talks of 1974, 1976 and 1977-78. "There was no real attempt to generate a number of technical options to the sharing of the Cauvery waters, with the pros and cons of each option being made clear so as to atleast help narrow the gap between political position."<sup>11</sup> Expert engineers on both sides were not enabled to quietly work together to find common ground; on the contrary, they got co-opted to advance or defend partisan position.

---

<sup>10</sup> Guhan, S., op. cit., p 34

<sup>11</sup> Guhan, S., op.cit., p 35.

Summing up the crux of the Cauvery imbroglio, S. Guhan says, "the Cauvery dispute, unlike the other river disputes in India, relates to the sharing of waters that are already being heavily utilized, rather than to the allocation of hitherto untapped surpluses. This means that no sharing arrangement can be postulated in a once for all cut and dried formula. Given variations from season to season in rainfall and storage levels, no solution will be sustainable unless the basin states continuously submit to equitable rules of regulation in a spirit of goodwill and accommodation."<sup>12</sup>

This very problem of it being a question of continued sharing of common waters, a settlement arrived through negotiation and consensus was always preferable to one arrived via adjudication. However, the long history of the problem and the unduly protracted nature of the negotiations has led to accumulation of expectations, grievances and antagonistic positions. The gap had widened further as a result.

The time however, for a long-term settlement is ripe. Karnataka is nearing the limit of possible water utilisation in the Cauvery basin in terms of project conception, while Tamil Nadu reached this position at the end of the 1970s. The recent agreement mediated by the Centre between the Cauvery basin states can be seen as an important step in this direction.

---

<sup>12</sup> Guhan, S., 'The Unquiet River', The Hindu (Madras), 8 January, 1996

## DEVELOPMENT AND RESOURCE CONFLICTS

This section examines the Cauvery Dispute in the larger context of resource conflicts centred around land and water in this era of increasing exploitation of natural resources. The Cauvery delta, is a largely semi – arid region and is densely populated. Hence the conflicts over water for irrigation is an extremely volatile issue. The violence in Karnataka in the aftermath of the announcement of the Interim Order against Tamilians and retaliation by Tamilians against the minority Kannadiga population threw into focus the seriousness of resource conflicts in India today.

Paddy is the main crop in the region, but sugarcane is also an important cash crop grown here. The area under sugarcane has increased continuously because of increasing demand, because it is remunerative and gives an assured income. But the water requirements of sugarcane are much higher than those of other crops.

Hence the expansion of sugarcane cultivation has contributed to the Cauvery dispute.<sup>13</sup>

The cultivation practices are based on the green revolution technology (HYV seeds, pesticides, fertilizers are extensively used). Therefore, the demand for irrigation facilities has been steadily growing.

---

<sup>13</sup> Folke, Steen, 'Conflicts over water and Land in South Indian Agriculture-A Political Economy perspective' Economic and political weekly, February 14, 1998, p 345.

This has led to increasing incidence of inter-group, intra-group rivalry within villages and among villages too, over the sharing of common water resources. Conflicts take place at the local level, between individuals and groups, but they are deeply enmeshed in complex relations that span villages, river basins and states and sometimes, even further.<sup>14</sup> The Cauvery Dispute itself needs to be located within the multifarious conflicts over water at different levels all over the Cauvery basin. In a sense it starts with the individual farmer, each farmer wants to maximise his output and for this he will do whatever he can to get the required water. This frequently results in conflicts between farmers, villages and between head and tail-enders of the canals. The introduction of Green Revolution Technologies, since the early 60s has intensified conflicts in places with canal irrigation. The cultivation of water-demanding high-yielding varieties as well as double or triple cropping have put increased stress on the land and water resources and this is exploding in conflicts. The Green Revolution has entailed a more individualistic approach to agriculture and has led to greater differentiation among farmers. Old institution of collective maintenance of common water sources have broken down in these regions.

The most important problem to be considered is one of unsustainable irrigation practices pursued in both the states. Of all the water available in the Cauvery system, probably only about half is properly utilized. The rest

---

<sup>14</sup>Fölke, Steen, *op.cit.*, p 348.

disappears by evaporation, percolation, etc. and excessive use in the irrigated fields. Until now, however, all efforts to conserve water have been half hearted. The very fact of the Cauvery Dispute been to have induced both the governments of Karnataka and Tamil Nadu to exhort their farmers to use as much water as possible, so as to legitimise their demands for a greater share of the total.<sup>15</sup>

---

<sup>15</sup> Folke, Steen, *op.cit.*, p 349

## SECTION – II

### **PRINCIPLES OF WATER SHARING, INTER STATE WATER DISPUTES: CONSTITUTION OF INDIA**

The Constitution of India treats 'water' as primarily a 'state subject'. But the centre has been assigned a role in the case of inter-state rivers. In the constitution, "water, that is to say, water supplies, irrigation, and canals, drainage and embankments, water storage and water power" is listed as Entry 17 of List II. Normally, therefore the state legislatures have full powers to legislate on all matters mentioned in Entry 17, List II, including their regulation, even if the source of water is an inter-state river within the territory of a state.

This Entry is subject to the provisions of Entry 56 of List I. Accordingly, the states cannot legislate on use of waters of an interstate river beyond their state boundaries. Moreover, efficient use of such waters depends on their equitable apportionment, involving more than one state, which in itself can be a subject matter of dispute, and hence its regulation and control cant be provided for in any state legislation.<sup>16</sup> Therefore, the Parliament may, under Entry 56 of List I, enact a law for the regulation and development of such inter-state rivers, under the control of the Union. The

---

<sup>16</sup> 'Inter-State Water Disputes,' the Report of the Commission on Centre-State Relations (The Sarkaria Commission), Government of India, Chapter XVII, Volume I, p 487.

Parliamentary law would, to the extent of its operation, have the effect of ousting the power of the state legislatures under Entry 17 of List II.

Specific provisions in the constitution as to the resolution of inter-state water disputes exist under Art 262. Under Art 262 (i), "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 inter-state river or river valley" Art 262(2) says, "Notwithstanding anything in the constitution, Parliament may, by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)".

The constitution, however, does not provide for a machinery for adjudication of such disputes. It is left to the Parliament to make such provisions, by law, for the adjudication of such disputes. The Parliament is also empowered to decide, whether or not the jurisdiction of courts is to be barred.

The River Boards Act, 1956, was enacted by the Parliament under Entry 56 of List I, with the purpose of promoting the integrated and optimum development of the waters of inter-state rivers and river valleys. These Boards were expected to help the optimum utilization of river waters and promote the development of irrigation, drainage, water supply, flood-



control and hydroelectric power. However, the provisions of this Act have not been put to use all these years and the Act has remained a dead letter.<sup>17</sup>

Parliament enacted the Inter-state River Water Disputes Act, 1956, for the settlement of these disputes. Section 3 of the Act says that, if a water dispute arises between the Governments of States, the State which has been or likely to be affected prejudicially by it, "may in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication". The Rules framed under the Act provide that a State Government, while sending an application under section 3 of the Act, must inform the centre of the "efforts, if any, made by the parties themselves to settle the dispute". Section 4(1) of the Act provides that, on receipt of such an application from any State Government, the Central Government shall, by notification in the official Gazette, constitute a Water Disputes Tribunal for the adjudication of the Water Dispute if it is of opinion that the water dispute cannot be settled by negotiations."<sup>18</sup>

Over the years, the following guiding principles have emerged in dealing with inter-state water disputes in India. These are the result of the reports of various commissions, judicial decisions or awards, inter-state

---

<sup>17</sup> The Sarkaria Commission Report op.cit., p 488

<sup>18</sup> Ibid., p 488.

agreements and inter-state practice, towards development of law in the field of inter-state water disputes in India.<sup>19</sup>

- A river is to be treated as an indivisible physical unit and for the purpose of sharing of water resources, a river under dispute includes its tributaries.
- Once a state was allotted a specific share of water out of the water resources of a river system, it would be free to utilize it in whatever way it may like.
- Almost all the Tribunals, which have given their awards upto now, have asserted the principle of 'optimum utilization' of water resources as the most important objective of any exercise in water sharing. Also, the principle of "avoidance of unnecessary waste in the utilization of waters" has been emphasized.
- Keeping in view the principle of 'community of interest in water resources, various Tribunals have recommended the mode of 'cooperative development' of the concerned water resources by the disputant states.

<sup>19</sup> Chauhan, B. R., "Inter-State Water Disputes in India : Appraisal of the problems," Water Project Series, Settlement of International and Inter-State Water Disputes in India, Indian Law Institute, N.M. Tripathi Pvt. Ltd. (Bombay), 1992, pp 316-328.

- The Tribunals have recognized the value of 'agreements' for settlement of such disputes.
- The Doctrine of Riparian Rights doesn't find application in the field of inter-state water disputes in India.
- The Theory of 'Proprietary Rights of a state,' with respect to waters of inter-state rivers or river valleys, is not applicable in the case of inter-state water disputes in India.
- All the major Tribunals, viz., the Krishna Water Dispute Tribunal, the Narmada Water Dispute Tribunal, the Godavari Water Dispute Tribunal and the Eradi Tribunal have applied the principle of "equitable apportionment" or "equity and fairness". It has been said by these Tribunals that, this concept does not lend itself to precise formulation for being applied to all situations and at all times. Thus, the standard of an 'equitable apportionment' requires the adaptation of the formula to the necessities of the particular situation. The various Tribunals engaged in the settlement of such disputes have mentioned a large number of such determining factors.
- In India no universal principles are applicable as to the order of priority for different uses of water.

- The Tribunals have, in their awards shown the tendency of protecting existing water rights.

However, the Cauvery dispute has defied solution till now, not because adequate legalistic solutions are not available, but because, it has got caught in a political maelstrom, which is effectively hindering any objective approach to its resolution.

## Chapter-3

### THE CAUVERY DISPUTE IN THE CONTEXT OF COALITIONS IN THE 1990S

This Chapter attempts to look at the changing dynamics of the party system in India, the working of coalition governments and how an inter-state dispute as the Cauvery has been managed by successive governments.

The functioning of India's democracy has been largely influenced by the dynamics of its party system. A 'dominant party system,'<sup>1</sup> where the Congress with its majority in both the state and national legislatures, and its immense organizational strength outside, was the dominant party, while the opposition parties were merely 'parties of pressure.'<sup>2</sup> The opposition parties in such a system influenced political decision-making at the margins. It was groups within the ruling party, that acted like opposition parties, seeking to influence, decision- making. There was 'positive communication and openness between the congress and the opposition. The Congress consisted of such diverse groups, and managers who could arrange bargains between important social groups. It emerged as a major integrating institution and was infact more important than all of the formal institutions of the state put together.'<sup>3</sup> This phase extended upto 1967.

---

<sup>1</sup> Kothari, Rajani, 'The Congress System in India', Asian Survey, December, 1964, pp 1161-1173.

<sup>2</sup> Kothari, Rajani, op.cit, p 1162

<sup>3</sup> Manor, James, 'Parties and the Party System', in Atul Kohli (ed), India's Democracy, p 5.

The second phase began in 1967 when, the mobilization of new recruits and groups into the political system began. As a result, "the dominant party model has started to give way to a more differentiated structure of party competition."<sup>4</sup> This period saw increased awakening and crystallization of interest groups, which made accommodation by a party like the congress alone, difficult. Decay of political institutions and their failure to respond to pressures from society marked this period. And as political institutions, especially parties, became less able to respond rationally to appeals from society, there was increased conflict between social groups as the decay of political institutions reduced the states capacity to manage and defuse conflict.<sup>5</sup> Another very important change was, the blurring of the clear lines that had existed between many political parties and their social bases. The result was, freer competition between political parties, abundant alteration between parties in power at the state and national levels, continued decay and fragmentation within parties and great fluidity within the party system, as faction and rumps and individuals defected or realigned themselves this way or that.<sup>6</sup> The dominance of the Congress was gone though its importance continued. There was genuine competition to the congress at both the central and state levels.

---

<sup>4</sup> Kothari, Rajani, 'Continuity and Change in the Indian Party System', Asian Survey, November, 1970, p 256.

<sup>5</sup> Manor, James, op.cit., p 73.

<sup>6</sup> Manor, James, op.cit., p 74.

However, it continued to command great popular support than any opposition party, and it still was the core, around which the party system was structured. Bipolarity got consolidated in the states, though such a thing could not occur at the national level.

In the 90s yet another phase has been ushered in A competitive, multi-party system, which can no longer be defined with reference to the Congress has taken shape. Increased political participation, which has been registered in recent times commentators observe, is linked to specific expectations. These are linked to cultural codes, which do not jell with the norms of the existing democratic institutions.<sup>7</sup> This, it is felt, is affecting the institutional consolidation of democracy. Large scale anti-incumbency vote has been another characteristic feature of politics in recent times.

A near complete bipolar consolidation has occurred all over the country. However, a high level of fractionalization has occurred in may states. And this bipolarity at the state level does not add up to a two party system at the national level. Another feature is that, with the congress gradually vacating the central position, there is a vacuum at the national level, and its is increasingly becoming difficult to occupy the middle space in national politics. The decline of a dominant, centrist catch- all party, has

---

<sup>7</sup> Yadav, Yogendra, 'Reconfiguration in Indian Politics, State Assembly Elections, 1993-95', Economic and Political Weekly, January, 20, 1996, p 98.

resulted in the rise of exclusionist parties with sectional political agendas.<sup>8</sup> A general malaise seems to pervade the party system—a general identification of parties with election, their failure to maintain an organic relationship with the electorate, and a subsequent loss of respect, legitimacy for the parties among the electorate. The locus of the electoral arena has shifted to the state-level, and no longer do nation-wide electoral waves influence electoral outcomes, as they did earlier. Such a fluid political matrix has manifested itself in the form of hung parliaments consecutively, since 89, through 93 and 96 to 98. Multi-party minority coalition governments have become the only possible form of governance at the national level.

Experience with Coalitions has raised a number of questions. Are coalitions necessarily unstable? Aren't they more accommodative than majoritarian politics, and hence more suited to the management of multiple diversities of Indian society?

There are two broad classes of Coalition theory : (1) Power Maximization Theories (Riker, 62, Gramson 61, Doold 76), which stress the maximization of pay offs i.e. , power and its derivatives, as the key factor in coalition-making, ignoring ideological and policy affinity (2) Policy based theories (Altered 70, de Swaan 73), which consider ideological and policy affinities as important factors.

---

<sup>8</sup> Yadav, Yogendra, op.cit., p 100.



Power maximization theories predict minimum winning coalitions i.e. coalitions in which each party is indispensable to the coalition winning a simple majority of seats because, here, each member's share of the pay off is maximized, and there is proportionality in the pay off sharing. Policy based theories predict coalitions composed of member parties, adjacent on the ideological scale, and atleast not incompatible on major issues.

Empirical evidence from comparative literature on coalition politics tends to support policy based theories, and hence, the importance of compatibility for coalition formation and even more for coalition longevity. Most of the successful coalitions in the west have been ideologically connected and particularly in countries of Europe, there are clear ideological divisions and parties are identified with particular ideological positions and social constituencies have fairly stable support bases.<sup>9</sup> But, within these constraints, pay off maximization plays a powerful behavioral role.

Luebbert points out that what needs focus is the kind of compromise that a coalition government is based upon. This is the key to stability. This in turn requires the consideration of (1) the policy profile of each party and (2) the relationships between the policy profiles of any two parties i.e. whether they are converging, diverging or tangential.<sup>10</sup> He shows from

---

<sup>9</sup> Sreedhran, E., *Coalition Politics in India-Lessons from Theory, Comparison and Recent History*, Centre for Policy Research, 1997, p 4 (Unpublished).

<sup>10</sup> Sreedharan, E., *op.cit.*, p 6.

comparative evidence, that policy profiles are converging if they are broadly in the same direction, while differing on the specifics, timing, etc. They are tangential if they address unrelated issues and so there is no incompatibility. They are diverging if their policy profile on specific issues is in opposite directions. Luebbert argues that, converging or tangential policy profiles lend themselves to explicit compromises, as there is very little departure from existing positions. But when policy profiles are diverging, or even tangential, it is difficult to modify positions explicitly, as they will have to publicly modify positions on their core principles. Therefore, in such coalitions, implicit compromises are resorted to, i.e., only "common minimum programmes" are agreed to, and disagreements left to be dealt with later. Such coalitions tend to be unstable, as too many disagreements are left out untackled, and do not lend themselves to publicly declared coalition pacts, that spell out agreements, disagreements, modes of consultation and dispute settlement.<sup>11</sup>

Another way of studying coalition behaviour is to divide the motivations of politicians or the political cultures of societies into "opportunistic" and "partisan" politics. Politics are opportunistic, if the pursuit of political office is primarily for the fruits of office, and partisan if the pursuit of office is, for changing public policy in the direction of the party's ideology and social constituency. Opportunistic parties, when in

---

<sup>11</sup> Sreedharan, E., op.cit., p 7

power, manipulate policy, to cater to the largest possible number of supporters to get re-elected. Such politics prevail in societies without clear cut ideology based parties, while in societies with a clear ideological spectrum, politics are about public policy, ideology etc and hence partisan.<sup>12</sup>

The Indian situation clearly corresponds to a particularly corrupt form of opportunistic politics, with all that it implies for the likely behaviour of coalitions.<sup>13</sup> However, so far as the extent to which Indian politics is 'partisan', it is not along a single left-right ideological axis, but along multiple cross-cutting axes, as secular – communal, centrist – regional autonomist, and a variety of caste – bloc based axes. Moreover, a very important factor that helps understand coalition behaviour and stability is the perception of every major political party that, a coalition situation is at best a second-best situation, and each party, during the coalition lifetime, will seek to improve its share of seats in the next election, Thus, conflict is in built into a coalition situation. Specifically, in India, coalitions have been seen as stop gap arrangements, until such time as defections or splits can be brought about to gain a majority. This is particularly prevalent/possible because, party identification is weak both among politicians and voters and well-defined social bases for parties do not exist.<sup>14</sup> The absence of clear ideological distance between parties too renders the Indian party system

---

<sup>12</sup> Ibid., p 7

<sup>13</sup> Ibid., p 7

<sup>14</sup> Sreedharan, E., op.cit., p 12

particularly prone to defections, splits and mergers. These factors, typical of the Indian situation, render any coalition unstable.

In the recent past, coalitions have ruled India as a rule rather than as an exception. Beginning with the National Front dispensation in 1989, followed by the United Front Experiment of 13 parties in 1996, and now the 18 party dispensation headed by the BJP, it has been coalitions of various hues all the way. The success of a coalitional model needs mutual respect, tolerance and approval of a time-bound action plan agreed upon explicitly among different constituents. The presence of a major party in the governing coalition – the CPM in West Bengal, Kerala, Tripura and the Congress in the UDF in Kerala has been an important factor in coalition stability.

However, in actual functioning, coalitions at the centre have been full of stability-rocking events right through. The basic reason for which has been that, unlike in Europe, party formations in India have expanded and shrunk under opportunistic impulses, with neither alliances nor interests being consistent, before and after elections. The prospects of power has succeeded in bringing forth strange bed fellows as a 'North – Indian , Anti-South, Centralizing' party as the BJP tying up with professedly Dravidian, anti-North parties as AIADMK first and then the DMK. But this has not prevented the constituents from putting their own agendas first. Ministers have considered themselves as representatives of their respective parties,

and not of the ministry as a whole.<sup>15</sup> Leaders are motivated, above all, by the desire to remain leaders, and minimize dissent within various section of their parties. They make talks with coalition partners seem complex to satisfy the rank and file, who are oriented to the vocal, symbolic and ideological aspects of our political culture.<sup>16</sup>

In the Indian case, another factor affecting coalition functioning has been the increasing narrowness of the candidate's appeal to voters. This adds to the sharpness of electoral antagonisms, that in turn makes the business of forming a government difficult, in addition to making governance itself difficult. With single large parties becoming rarer, and coalitions needing more parties for reaching the majority mark, banding enough of them together and keeping them together has become an uphill task.<sup>17</sup> The larger the number of parties in a coalition, and the more sensitive their inter-party relationships, the greater the fragility of governments<sup>18</sup>. This has made their accountability to the legislature more fitful, as unsure of voting strength, party managers prefer to deal with them in the secrecy of committee rooms.

---

<sup>15</sup> Sarangi, Prakash, 'Making and Breaking Coalition,' *The Hindu* (Madras), 1 May 1997.

<sup>16</sup> Chakravarthi Nikhil, 'Coalition Compulsions', *The Hindu* (Madras), 27 July, 1996.

<sup>17</sup> Chopra, Pran, 'For a Democracy That Works' in Chopra Pran (ed), *India: The Way Ahead*, Har Anand Publication Pvt. Ltd., New Delhi, 1998, p 24.

<sup>18</sup> Gadgil, V. N., 'Coalition Politics in India and Abroad,' in Subash Kashyap (ed), *Coalition Governments and Politics in India a*, Uppal Publishing House, New Delhi, 1997, p 14.

The first casualty of a coalition is the principle of collective responsibility.<sup>19</sup> The sense of direction and unity of purpose so essential for proper functioning of a cabinet gets lost. Ministers are under pressure from rank and file to show that they have not sold out to their partners. When the government is in trouble, the temptation to make scape goats of their partners is enormous, especially when elections are round the corner.

The second victim of a coalition is the office of the Prime Minister. In a parliamentary system, despite being first among equals, he has enormous powers of patronage. But here, he is under enormous pressure from the smallest party in the coalition, and power shifts to an extra-constitutional authority like a steering committee. In the United Front, it was the steering committee which held the reins. The authority of the Prime Minister was challenged by the Janata Dal's Working President on the question of women's reservations and a campaign was carried out both within and outside the Parliament. When the leader of a constituent Laloo Prasad Yadav got involved in the fodder scam, the then Prime Minister Gujral couldn't get him to lay down his papers. Infact, Deve Gowda was hardly the acknowledged leader of the UF set up. He was acceptable, but neither his personality, nor his political standing were such that he could be accepted as

---

<sup>19</sup> Chakravarthi, Nikhil, 'Coalition Compulsions', The Hindu (Madras), 27 July 1996.

the natural leader who commands unquestioned loyalty. Naturally the tendency of individual ministers to function autonomously grew.

Another significant feature of Indian coalitions in recent times has been that regional parties such as the Telugu Desam, AGP, DMK, AIADMK have played decisive, conspicuous roles in the formation of coalition governments at the centre. The United Front and the BJP led coalitions had as important players, regional parties, which were powerful enough and decisive enough to influence the course of decision-making. The Uddham Singh Nagar issue, where one constituent's objection to the inclusion of the above mentioned district in the state of Uttaranchal, brought matters to a grinding halt on this front, is a standing example. The AIADMK Chief's dictates could be ignored only at the cost of having the Government collapse, as long as the alliance lasted. Similarly, the National Front Government was nothing more than a group of regional parties, seeking commonly to serve a national cause. It is a consortium of powerful Chief Ministers who call the shots at the centre.<sup>20</sup> The earlier notion of a national party is rapidly losing its significance. Even the so called national parties are nothing, but coalitions of several regional actors. As a result, regional political formations of all hues have acquired a resilience, resulting in multiple bipolarities.

---

<sup>20</sup> Raman P., 'Age of Coalitions', The Hindustan Times, 11 April, 1997.

In such a set of circumstances, issues of importance to the state actors at the centre have acquired a certain momentum. Coalition indeed is, in some ways inherent in the nature of our society.<sup>21</sup> And it is healthy sign that it is getting reflected in the polity. But in practice, a catch-22 situation of sorts has resulted, as one can see in the following discussion on the Cauvery dispute as it ran its course during the lives of two coalitions, the UF and the BJP – led coalition.

A ray of hope was seen on the Cauvery front when Deve Gowda's United Front took office. With the Janata Dal in power in Karnataka and the DMK in Tamil Nadu, and both of these being part of the United Front Government at the centre, the Camaraderie over there was hoped to be shown on the Cauvery front too, and some form of a mutually amicable settlement found. However, an entirely unpredictable course was taken. Partisan motives were attributed to the Prime Minister's attempts to solve the dispute. Deve Gowda's decision to bail out Tamil Nadu by ordering the release of 5 tmcft to save a standing crop was seen as betraying his own states interests to save his government at the centre. DMK, another coalitional constituent threatened to pull out of the front otherwise. Another significant factor that came to be observed at this juncture was that, parties across the spectrum in each state spearheaded the campaign for their respective state. While the Congress and the BJP in Karnataka spearheaded

---

<sup>21</sup> Kothari, R., 'More or Coalesce', Telegraph (Calcutta), 6 December 1997.



the opposition to any releases, the Tamil Nadu Congress pressurized the DMK Government to get a good deal from the centre. However, one positive fall out of the kind of dispensation at the centre was that, attitudes were not allowed to harden and the lines of communication barely managed to remain open, as both the DMK and the JD had a stake in keeping the UF in office. However, hopes of an amicable settlement were belied, as dependence on regional partners effectively tied down the centres hands in taking any action. Under the Vajpayee dispensation. Coalition compulsions came to the fore yet again, when the AIADMK, an ally of the BJP at the centre opposed the participation of Tamil Nadu Chief Minister M. Karunanidhi in the talks on the Cauvery dispute in New Delhi. The AIADMK refused to acknowledge the agreement agreed to by the states of Karnataka and Tamil Nadu under the aegis of the centre. The AIADMK supremo's need to woo central and coastal Tamil Nadu areas by stoking the fires of the Cauvery, made any such settlement anathema to her party. Thus, the Cauvery settlement produced another tremor in the Government.

Thus, an ambiguous situation obtains when one looks at the way successive coalition have handled the issue of the Cauvery. Coalition situation seem to have necessitated the smoothening of the channels of communication at times, while at other times seem to have blocked any moves that could help the resolution of contentious issues. The role of

individual actors has proved important in such situations. The role played by Vajpayee as Prime Minister was important, while a similar role couldn't be played by Deve Gowda due to a variety of factors again.

However, in the interest of stable governance, such ambiguity needs to be removed. Publicly announced coalition pacts, negotiated in detail, that spell out the position of each partner on all important issues, and their mutual obligations and responsibilities are essential for good governance. This is so in many European and Scandinavian countries. Such pacts reduce uncertainty, let the government know what to expect in case it attempts a particular course of action.<sup>22</sup> Institutional mechanisms such as steering committees need to be put in place, to address issues which threaten coalition harmony. However, while the European model of coalition parts tends to implicitly assume clearly articulated party positions along the ideological spectrum, as well as agreements on the fundamentals of the political system, there is no such thing in India. Regional parties and issues have further accentuated the difficulties of coalition governments in India so far as coalition stability and policy capacity are concerned.

Implications of this development, for the Cauvery River Water Dispute are a little ambiguous. While such issues have occupied centre-stage

---

<sup>22</sup> Sreedharan, E., *op.cit*, p 19.

and states' voices are getting heard with powers that matter, vociferous championing of state rights by concerned parties has made reconciliation and settlement of disputes, an up hill task.

## Chapter-4

### CHANGING FEDERAL EQUATIONS IN THE 1990S AND THE CAUVERY DISPUTE.

India adopted Parliamentary Federalism to suit its multi-cultural society, when it became an independent country. Its real nature began to get revealed only with its functioning

The Constitution of India is basically federal, but with strikingly unitary features<sup>1</sup>. However, The presence of a single dominant party-the Congress-at both the state as well as the national levels decisively influenced the moulding of the Indian federation in the first two decades after independence. The Congress Party, with its culture of political management through accommodation, made centre-state relations too an area of such an accommodation. Informal channels of communication which were more in the nature of bargaining between party leaders at different levels were used for conducting centre-state relations. This however, provided the necessary corrective to a centralized federal arrangement. This, and the strong-centre framework with its reluctant acceptance of federalism as the organizing principle, ensured that the development of institutionalized mechanisms of cooperative federalism did not take place. Even then, it was easy to resolve

---

<sup>1</sup> Basu, D.D, Introduction to the Constitution of India, Prentice-Hall of India Pvt. Ltd., 1991, p 50.

differences that arose between the Union and among states, at the party level as the same party was in power at all these levels.. Such fora of inter-governmental cooperation as the National Development Council, Chief Ministers Conference, National Integration Council were made available by the constitution, but fell into disuse.

Post-67, several opposition governments took power in the states, while the dominance of the congress continued at the centre. These state governments of different hues could not find legitimate channels of inter-governmental cooperation, as all fora of executive federalism chaired by the Prime Minister became fora for reaffirmation of personal loyalty to Mrs. Gandhi, by the Chief Ministers of Congress ruled states. The opposition parties were not given any opportunities for interaction by the Congress. Mrs. Gandhi adopted a more confrontational posture towards opposition controlled governments in various states.<sup>2</sup> There was centralized decision-making, weakening of institutions and creation of an overly personalized regime, within her own party.<sup>3</sup> This led to a crisis in the political system, as Paul Brass observes, during the same period, the forces of regionalism and decentralization were gaining in strength, creating a disjunction between the two tendencies. The Emergency brought about a paradigmatic shift, characterized by a puissant centre, presiding over a federation of thoroughly

---

<sup>2</sup> Manor, James, 'Parties and the Party System' in Atul Kohli (ed). India's Democracy, p 70.

<sup>3</sup> Ibid., p 70.

enfeebled states.<sup>4</sup> But instead of homogenizing the regions as intended, centralization made possible the assertion of their natural heterogeneity so that they actually diverged from one another.<sup>5</sup> When the Janata came to power in the post-emergency period, centre-state relations were put back on the political agenda in an attempt to readjust the relations between the two in such a way, that genuine political and economic grievances could be taken account of. The Janata regime was prepared to accommodate these pressures, mainly by a return to the constitution and by reactivating such instruments as the National Development Council. However, with the return of the Congress, the same old centralizing and autocratic approach to centre-state relations was restored. The sense of disgruntlement of local élites, laced with popular support for 'democratic values' during led to opposition parties being returned to power with comfortable majorities during the 80s.<sup>6</sup> Regional parties which acquired power in the states continued to be seen as anti-national and centre-state, relations continued to be strained. The confrontational element thus began to predominate in an increasingly competitive political system.

The national and state party systems today present a far more variable picture. The emergence in recent times of regional parties – explicitly

---

<sup>4</sup> Satyamurthy, TV, 'Impact of Centre-State Relations on Indian Politics', *Economic and Political weekly*, September 1989, p 2137.

<sup>5</sup> Manor, James, *op.cit.*, p 71.

<sup>6</sup> Satyamurthy, TV, *op.cit.*, p 2141.

regional parties, and substantially autonomous regional units of supposedly national parties is an important factor affecting centre-state relations in recent times Indian federalism has brighter prospects than they have been for quite sometime.<sup>7</sup> The reconfiguration of the party system and the emergence of multiple bipolarities across the country, which does not however add up to a bipolar situation at the centre, has made absolute majorities a thing of the past. There have been hung parliaments since 89 in New Delhi. Regional Parties have made their presence felt so strongly at the centre, that they have been crucial partners in all of the coalitions that have governed from 1989. The tendency towards centralization has begun to be reversed, especially since 1989, when hung parliaments became the norm at the centre.<sup>8</sup>

The Congress minority government which took power in New Delhi in 1991, on one occasion responded to pressure from a state government run by an avowedly regional party-the AIADMK of Tamil Nadu, on the issue of the release of Cauvery waters to Tamil Nadu by Karnataka. Incidents like this one have been multiple in the 90s.

The number and the ideological range of political formations which have a stake in state power is unprecedented today. The locus and the

---

<sup>7</sup> Manor, James, 'Regional Parties in Federal Systems', in Balveer Arora and Verney Douglas (ed), *Multiple Identities in a Single State, Indian Federalism in Comparative perspective*. Konark Publishers Pvt. Ltd., 1995, p 111.

<sup>8</sup> Manor, James, *op.cit*, p 131.

operative level of the logic of electoral ware has shifted from that of the nation to the states.<sup>9</sup> The age of nation wide electoral waves is past. The multiparty system at the centre is undergoing a process of federalization, as evident from the 89,91,96 & 98 elections to the Lok Sabha.

## SECTION - II

This section seeks to understand how federal relations have been managed in the era of one-party dominance, institutions meant for the same, their effectiveness /usefulness in the earlier era, and then goes on to see their relevance in a new era of Indian politics. In this context, the federal – both inter-state and centre –state dimension of the Cauvery dispute will be studied.

The constitution envisaged the setting up of institutions such as the Inter-State Council, National Development Council, etc. as instruments of executive federalism. However, each one of these institutions have failed to come to life due to usage and sufferance. While for overall coordination of policy and action on such issues of national importance as-health, local self government and sales tax-such sectoral bodies have been established, they can hardly serve the purpose of overall coordination of policy and action on all issues of national importance. They donot provide a structure for

---

<sup>9</sup> Yadav, Yogendra, ' Reconfiguration in Indian Politics, State Assembly Elections 1993-95', Economic and Political Weekly, January 13-20, 1996, p 102.



investigating and resolving multi-sectoral inter- governmental problems, observed the Sarkaria Commission.

Zonal councils were set up to sort out residuary problems arising out of the reorganization of states. Initial enthusiasm declined, as one party in power at Centre and states for nearly a decade after setting them up led to the thinking that it was more convenient for the Union and the States to sort out their problems through party channels instead of zonal councils.

The National Development Council was another body, set up to associate the states in the formulation of plans according to felt needs.

However, the most important mechanism envisage for inter-unit relations was the Inter-State Council provided for by Art. 263 of the constitution. However, divergent roles were envisaged for it by different powers that be. While the Congress wanted it to be an institution for resolution of inter-state disputes, other parties envisaged it as an institution for centre-state coordination and resolution of differences, etc. All Committees which went into the issues of centre-state relations suggested the immediate constitution of the Inter-State Council. The Rajamannar Committee appointed by the Government of Tamil Nadu to go into the issues of centre-state relations recommended that the Inter-State Council be consulted on all matters of national importance or those which affect one or

more states.<sup>10</sup> The Sarkaria Commission recommended that the Inter-State Council be renamed the Inter-Government Council, “to maintain its true character and differentiate it from other sectoral bodies.”<sup>11</sup> The Congress stalled the setting up of the Inter-State Council to “strengthen its hold over party organizations at the regional level, and avoid the embarrassment likely to arise when formalized solutions by an Inter-State Council create problems.”<sup>12</sup> It was only in 1990 that the Inter-State Council was constituted under a presidential notification. And six years into its inception, it met a second time in 1996 and reiterated its emphasis on the need to remove major irritants in federal relations. With the regional parties emerging as an influential force to reckon with in the decision-making processes of the ruling coalition, the United Front has felt the need to reactivate both the Inter-state Council (ISC) and the National Development Council (NDC), in its Common Minimum Programme (CMP).<sup>13</sup>

With the Prime Minister at the helm, the Inter-State Council has a high profile composition. The need for such mechanism to promote both inter-state and centre-state relations has become more crucial than ever

---

<sup>10</sup> Centre-State Relations committee (Rajamennar Committee on Centre-State Relations), Government of Tamil Nadu, Madras 1975, p 24.

<sup>11</sup> The Report of the Commission on Centre-State Relations (The Sarkaria Commission) Government of India, Volume I, p 41.

<sup>12</sup> Datta, Prabhat, Regionalisation of Indian Politics, Sterling Publishers Pvt. Ltd., 1993, p 126.

<sup>13</sup> Need for New Agenda, The Hindu (Madras), 18 October, 1996.

before.<sup>14</sup> However, its functioning has been in fits and starts and hasn't realized any of the expectations pinned to it.

The CMs' conferences and Governors' conferences have not had importance beyond the symbolic.

Thus, the institutions of executive federalism have all been emasculated during the era of congress dominance, through disuse. When the need for such institutions was felt, as the informal channels of bargaining, negotiations and accommodation ceased to exist, there was no way.

The Cauvery dispute grew cantankerous at a time when massive changes had occurred in the party system, changing the basic ways in which federal relations were conducted. It was a time when new opportunities were opening up for inter-state and centre –state relations, as well as new problems were cropping up, hindering the amicable conduct of the same.

Regional parties have become important constituents of the national firmament in the 90s. The decisive element in the UF was the front of regional level leaders, represented by the Chief Ministers of Andhra Pradesh, Tamil Nadu and Assam.<sup>15</sup> Similarly, the coalition led by the BJP had an array of regional parties across the country. Powerseekers now have

---

<sup>14</sup> Ibid.

<sup>15</sup> -----, The Pioneer (New Delhi), 6 June, 1996.

to reach New Delhi only through Hyderabad, Calcutta or Jaipur. It is a consortium of powerful Chief –Ministers who call the shots at the Centre.<sup>16</sup> On no occasion has the role of the ‘regionals’ been so decisive, so conspicuous or institutionalized as it was in the form and functioning of the United Front (UF)<sup>17</sup>. Even national parties such as the Congress and the BJP are getting regionalised. To extend its influence in various states the party has allowed its state units to adapt more fully to varied political cultures of different states. The congress too began granting significant degree of independence to its regional units, under P.V. Narasimha Rao.

The difficult situation which the P.V. Narasimha Rao dispensation faced on this issue is an indication of the changed equations. The AIADMK had, by then broken off ties with the Congress, while the Janata Dal was firmly entrenched in Karnataka. If he backed Karnataka fully by accepting its version of the situation, he would only be endorsing the Janata Dal’s stand. Otherwise, AIADMK’s credibility would shoot up and would prove fatal for the Congress’ attempts to bring back the alliance with the AIADMK. Narasimha Rao could have used Article 256 to make Karnataka comply with the Tribunals order and failing to secure compliance, hint at recourse to Article 356.<sup>18</sup> However, exit of either of the Chief Ministers, or

---

<sup>16</sup> Raman, P., ‘The Age of Coalitions’, The Hindustan Times (Delhi), 11 April, 1997.

<sup>17</sup> Chopra, Pran., ‘A Creative Crisis’, The Hindu (Madras), 22 April, 1997.

<sup>18</sup> Ramachandran S., ‘Rowing on Cauvery to Reach Votebanks’, The Times of India (New Delhi), 11 January, 1996.

dismissal would have heightened the conflict, sealing the fate of the Congress in the election. Both the Janata Dal and the AIADMK would then gain in their respective states. Rao's limited objective was to preempt a worsening situation, which would have affected electoral prospects, and at the same time hindered prospective allies in either of the states. Local logic invariably prevails when issues of identity, couched as demands for space, voice and esteem in the wider polity, dominate the electoral calculation.<sup>19</sup> The doctrine of state rights has come up strongly and All Party Conferences conducted in both the states of Tamil Nadu and Karnataka have been endorsing the respective stands of their state governments, during the tense moments of the Cauvery Dispute. In an earlier era, the outstanding mediation of a central emissary, Babu Jagjivan Ram was possible due to an entirely different set of political circumstances, when discipline and cooperation characterized federal relations, due to single party dominance.

The Cauvery dispute, as it unfolded during the regime of Deve Gowda's 13-party United Front was a clear reflection of the changed federal balance. When the leader of a regional party, Deve Gowda took over as the Prime Minister, it was said that it gave a much welcome national perspective to the Cauvery dispute.<sup>20</sup> The ruling parties in both the states-Janata Dal in Karnataka and the DMK in Tamil Nadu – being a part of the ruling coalition

---

<sup>19</sup> Arora, Balveer, 'Negotiating Differences: The Challenge of Federal Coalitions', *Denouement*, January-February, 1999, p. 11.

<sup>20</sup> -----, *The Deccan Herald*, 11 August, 1996.

at the centre, it was hoped that the friendly equations between these parties would lead a lot to softening of attitudes.

However, this could only help keep the communication lines open and both the sides were attempting to do two things at the same time.

1. To stick to well known stands
2. To keep the door open to prevent a point of no return.

The Prime Minister, who could have been an effective arbitrator, owing to his unique standing in relation to both the state governments, found his hands tied. When Gowda took a sympathetic stand on the Tamil Nadu Government's request for water, for saving the standing crop, as the DMK threatened to pull out of the UF otherwise, and made his own party government of J.H. Patel in Karnataka comply, there were immediate protests by all parties within Karnataka, that its interests were being betrayed to save Gowada's government. This led to the Chief Minister retreating on his decision to release the much needed water. Thus, there obtains a situation where strong championing of state rights by regional parties with a decisive say in national politics, has tilted the federal balance in favour of the states, atleast politically.

In the absence of any inter-governmental fora for fruitful negotiations and binding decisions, and the inability of the centre to

either effectively goad the concerned parties to arrive at an amicable settlement, or to force the implementation of the Tribunal's orders through recourse to Articles 256 and 356, the fate of resolution of inter-state disputes seems sealed. The only way out as was seen in the Cauvery dispute happens to be the orders of the apex court, whose role has been explicitly debarred by law earlier. It was due to the Supreme Court's intervention, that Prime Minister Vajpayee could, ignoring the protests of his ally, the AIADMK, take a serious interest in the issue and get the states of Karnataka and Tamil Nadu to the negotiating table and chalkout a way of solving the problem

Thus, only the judicial route seems left, to solve inter-state disputes in India today. However, if one of the parties refuses to comply even with the courts orders, there seems no other way out. The need for strong institutions for managing both inter-state and centre-state relations has never been more.

## **Chapter-5**

### **CONCLUSION**

The 90s have witnessed new trends in India's parliamentary federalism. The Cauvery River Waters Dispute and the political wranglings it has witnessed in recent times are symptomatic of these new developments.

Indian society has been undergoing increasing democratisation and more and more, hitherto unrepresented sections of the society are entering the arena of politics. India's pluralism is getting reflected in its power structure. The result is that the days of absolute majorities are over and an increasingly aware electorate has been giving one fractured verdict after another. Hung parliaments and coalitions are the political realities of today. And these coalitions can be called 'federal coalitions' as regional parties are invariably a part of the governments being formed at the centre. This has had a marked change on the way governance has been carried out. While issues of regional importance have occupied centre-stage, owing to the presence of king-making regional leaders in the central government, solution of problems of an inter-state nature has become intractable, as displeasing any regional ally could prove suicidal for any government in power. Thus, a reversal of the process of centralisation has been going on. One important fall out of this has been the weakening of the role of the Prime Minister in



India's federal firmament. Inter-State Disputes such as the Cauvery have become unresolvable with vocal regional parties with a stake in powers that be at the centre championing their state interests as never before.

The Cauvery River Waters Dispute unlike other river disputes in India dragged on for too long vitiating the society and politics of the concerned states. It has led to less than optimum utilisation of water, causing economic hardships collectively at the national level too, apart from individual level users<sup>1</sup>. The problem of the Cauvery, according to Alagh, is primarily a 'Management problem' as it happens to be a river where little water goes to the sea<sup>2</sup>. According to S. Guhan, essentially the dispute relates to the sharing of waters in a river that is already being almost fully utilised. Moreover, the dispute has had a very long history, during which, expectations, grievances and antagonistic positions have cumulated<sup>3</sup>.

The legitimate question of fair sharing of the Cauvery Waters has been spoilt by the governments of both the states, driven by the forces of party politics. They have generated and fostered strong chauvinistic sentiments among the general public, which in its turn has limited the respective governments own negotiating freedom and flexibility.<sup>4</sup>

---

<sup>1</sup> ----- The Tribune (Chandigarh), 29 July 1996.

<sup>2</sup> ----- Ramachandran, S., The Times of India, 11 January, 1996.

<sup>3</sup> Guhan, S., The Cauvery Dispute: Towards Conciliation, Kasturi and Sons Pvt. Ltd. (Madras), 1993, p 58.

<sup>4</sup> Iyer, R. Ramaswamy, The Cauvery Dispute, Centre for Policy Research, New Delhi, 1995, p 4.

The dispute, which strained the relations between the states of Karnataka and Tamil Nadu, called into question, the entire gamut of inter-state dispute settlement mechanisms in India. The Inter-State Council contemplated by the Constitution for the resolution of such differences could never become functional. The National Development Council and Zonal councils too have been miserable failures. Referring such disputes to Tribunals, if negotiations fail has evolved as a practice, Tribunals secure a Chief Minister against accusations of a sell out. However, there have generally been avoidable delays in the setting up of Tribunals, spoiling the atmosphere further. Once the Tribunals orders were given, there was no quickness in gazetting its orders and ensuring its implementation. A gaping loophole that remains is that, there is no way a Tribunals decision can be made absolutely binding, though in principle it is binding on all the concerned parties. Karnataka accused the Tribunal of partisanship and refused to implement the interim order. The centre could not do anything to get it implemented. This remains a challenge to the role of the centre in the arbitration of inter-state disputes. More so, in recent times, when central governments are playing second fiddle to regional coalition partners.

It has been suggested that novel mechanisms as linking the sanction of central grants to, say fight drought in a particular state to the states reasonableness in settling outstanding disputes with its neighbours, could ensure compliance. Another suggestion has been that, if the states fail to

comply with the decisions of a Tribunal, it be treated as non-compliance with the directions of the centre under Article 256 of the Constitution with explicit provision that such failure is a ground for the application of Article 356<sup>5</sup>. The Sarkaria Commission recommended that states should try to resolve their points of difference in a spirit of accommodation. The Union Government must intervene otherwise to bring a national perspective to the whole affair. This role advocated for the centre has been rendered difficult, owing to the regional complexion of federal coalitions at the centre. It required a Supreme Court directive setting a deadline for the resolution of the dispute to get the governments of Karnataka and Tamil Nadu to arrive at a solution, in the spirit of give and take. The status and calibre of the federal players too proved crucial in this particular instance.

Simultaneously, the need to involve experts and technocrats of integrity in the negotiating processes has also been suggested. People of the river basin states must also be prepared to appreciate the realities on the ground, which will make it inevitable for the concerned people to accept some hard and unpopular decision in the interest of the amicable settlement of the dispute.

The River Boards Act of 1956 envisages to provide a framework for fully exploiting rivers for the benefit of the entire basin and seeks to divert the issue of river waters from the mainstream of inter-state politics. It

---

<sup>5</sup> Gundu Rao, N. C. 'Politics Outbeats Natural Crisis', The Deccan Herald, 2 January 1996.

envisaged the creation of River Boards to advise the state governments for integrated development of inter-state river basins. In addition, the Boards could, if empowered by the central government, prepare schemes for the holistic management of water resources and allocate sums among states for the same. However, not a single River Board has been created, thus letting go of a mechanism without even trying out its efficacy.

The idea of a water grid was put forth in the National Perspective for Water Development. Inter-basin transfer of river waters, from surplus to deficit areas would not only put at rest inter-state river water disputes, but also, avoid wastage and put to optimum use, a resource, that has been becoming increasingly scarce.

A National Water Policy has been framed, but it has still not been operationalised. With the constant increase in the use of water and it becoming increasingly scarce, disputes relating to its sharing are likely to get worse. Hence, the need for a National Water Policy, which clearly sets out the goals and principles by which this resource can be put to use in the most optimum and equitable way. The success of National Water Policy depends upon the development and maintenance of a national consensus and commitment to its underlying principles and objectives. However, not much headway has been made.

Other suggestions with regard to this crucial issue have been.<sup>6</sup>

1. In case of river disputes, the entire basin of the river has to be considered as one unit, not separated by artificial, political boundaries of states.
2. The failure of negotiations is because of no fixed framework within which the dispute has to be resolved, exists. A fixed framework within which all disputes has to be resolved, must be developed. This is to because most of the river water disputes are basically similar.
3. A time limit has to be fixed beyond which the matter has to be referred to a Tribunal.
4. A permanent Tribunal has to be set up with the powers of the highest court of the land.
5. A detailed survey of all the major inter-state rivers has to be conducted, to assess the quantity of water available and the way it is being appropriated.
6. The agreements arrived at between states though negotiations need to be given legislative sanction by making it an Act of Parliament, to prevent frequent amendments.

---

<sup>6</sup> Ramana, M. V., 'Inter-State River Water Disputes in India, Orient Longman, 1992, pp 79-80.

7. The functioning of Tribunals must be made effective a time limit has to be fixed before which a decision has to be given and the number of reviews allowed on a Tribunal's decision has to be limited.

However, it is finally a spirit of cooperation, conciliation and readiness to peaceful coexistence that can guarantee fair and equitable distribution of resources, as it is a continuous process and not a one time affair, that can be imposed by any agency. Along with this the need to reduce water wastage through conservation, efficient use, modernization of irrigation systems, exploration of groundwater, rain water conservation, improvement of drainage, change in crop pattern, etc. should also go hand in hand for a holistic solution to the problem of water shortage. Water Resource Planning on an all-India level is needed to tide over the problem.

What is needed is an understanding that the federal idea is all about effective governance and good management. Water Disputes must be seen not only from rigid technical or legal angle but also from the preeminently important humanitarian point of view because water forms a focal point and basis for the biological existence as well as sustenance and socio-economic well being of the human folks involved in these controversies.

## BIBLIOGRAPHY

### BOOKS

Basheer Hussain, M., The Cauvery Water Dispute, Rao and Raghavan Publishers, Mysore, 1972.

Butler, David., Lahiri, Ashok., Roy, Prannoy., India Decides : Elections 1952-1991, Living Media Books, New Delhi, 1991.

Chatterjee, Partha (ed.), State and Politics in India, Oxford University Press, New Delhi, 1998.

Chibber and Petrocick., 'Social Cleavages elections and Indian Party System', in Sisson, Richard., and Roy, Ramashray., (ed.), Diversity and Dominance in Indian Politics, Volume 1, Sage Publication, New Delhi, 1990.

Chowdury, B.C., Federal and State Politics in India, Discovery Publishing House, New Delhi, 1990.

Frankel, Fracine R. & Rao, M.S.A. (ed), Dominance and State Power in Modern India – Decline of a Social Order Volume I & II, Oxford University Press, New Delhi, 1989.

Gulhati, N.D. , Development of Inter-State Rivers: Law and Practice in India, Allied Publishers, Bombay, 1972.

Jain, S.N., Jacob, Alice., S.C. Jain., Inter-State Water Disputes in India, Suggestions for Reform in Law, The Indian Law Institute, New Delhi, 1971.

Khan, Rashiduddin., Federal India – A design for change., Vikas Publishing House Pvt. Ltd., 1992.

Kothari, Rajani, "Continuity and Change in the Party System", in D.L. Sheth (ed.), Citizens and Parties, Allied Publishers, Delhi, 1975.

Riker, William H., Theory of Political Coalitions, Calcutta, Oxford and IBH Publishing House, 1970.

Sahni, Naresh Chander (ed.), Coalition Politics in India, New Academic Publishing Company, 1971.

Seervai, H.M., Constitutional Law of India – A Critical Commentary, Vol. I, N.M. Tripathi Pvt. Ltd., Bombay, 1984.

Wheare, K.C. , Federal Government, Oxford University Press, 1963.

Wisdom, A.S., The Law of Rivers and Water Courses, III Edition, Shaw and Sons Limited , London, 1975.



## **JOURNALS / PAPERS / ARTICLES**

Alam, Javeed., 'Behind the Verdict', Economic and Political Weekly, June 22, 1996.

Bhalla S. Surjit, 'The welcome era of Coalition Politics', Seminar volume 465, May 1998.

Chakravarthy, Nikhil., 'Storm over Cauvery', Mainstream, January 4, 1992.

Dakshina Murthy., K.S., Balachandran., P.K., 'Cauvery : Troubled Waters', The Hindustran Times, 29 December , 1995.

Dandavate, Madhu., 'Coalition Politics in India', Janata, 29 December, 1996.

Gupta, Dipankar., 'Coalition Politics-making a virtue of necessity, The Times of India (New Delhi), 26 June, 1996.

Iyer, R. Ramaswamy, 'Water Resource Planning -Changing Perspectives', Economic and Political Weekly, December 12, 1998.

Iyer, R. Ramaswamy., ' Cauvery Tribunal's fate – opening the flood gates of chauvinism', Indian Express (New Delhi), 11 August , 1992.

Iyer, R. Ramaswamy., 'The Cavery Dispute and the Rule of Law', The Times of India (New Delhi), 6 January, 1996.

Jacob, Austin, 'The Harmon Doctrine', Canada Bar Review, No. 37, 1959.

Jayaranjan, J., 'Cauvery Dispute : Changing Paradigms', Economic and Political Weekly, November 14, 1998.

Jones, Morris W.H., ' Dominance and Dissent : The inter relations in the Indian party system', Government and Opposition, 1 (4), 1996.

Limaye, Madhu., 'Coalition Politics-Fairplay is pre-condition', The Times of India, (New Delhi), 23 May, 1996.

Mohan, Surendra., 'Coalition Partners', Mainstream, 34 (22), 4 March 1996.

Murthy, Sathya N., 'Cauvery still a long way to flow trouble free', The observer, 8 November 1996.

Nanjundaswamy, 'Imbalances must be rectified', The Deccan Herald. 1 February, 1996.

Pereira, Ignatius, 'The Cauvery one River, two claimants', Blitz (Bombay), 13 January, 1996.

Ram, Arun., 'Farmers' interaction needed to solve riparian dispute', News Time (Hyderabad), , 12 January, 1996.

Ramana, M.V.V., 'Cauvery Dispute – A cogent analysis', The observer, 14 August 1993.

Rao, Gundu N.C., 'Boycott is no solution', The Deccan Herald, 7 July, 1992.

Rao, Gundu N.C., 'Secrecy breeds suspicion', The Deccan Herald, 1 October, 1996.

Rao, N.C. Gundu., 'Politics 'outbeats natural crisis'. The Deccan Herald. 2 January, 1996.

Rao, N.C. Gundu., 'Reason must prevail over emotion', The Deccan Herald, 9 January, 1996.

Rao, N.C. Gundu., 'Reason must prevail', The Deccan Herald, 27 July, 1993.

Rao, N.C., Gundu, 'Facts are the first casualty', The Deccan Herald, 20 April, 1993.

Ravindra, K.R., 'Disquietly flows the Cauvery', The Financial Express (New Delhi), 13 October, 1993.

Saxena, Rekha., 'Coalitions in India : A case for combination', Pioneer, (New Delhi), 4 May, 1996.

Storm, Kaare., 'Minority Governments in Parliamentary Democracy, the rationality of non-winning cabinet solution', comparative political studies, 17 (2), July 1984.

Venkatesan, V., Subramanian T.S., Menon, Parvathi., 'And Quiet Flows the Cauvery', Frontline, August 28, 1998.

## **REPORTS**

Administrative Reforms Commission Report on Centre-State Relationships, Government of India, New Delhi, 1969.

Annual Report 1997-98, Ministry of Water Resources, Government of India, 1998.

Report of the Cauvery Fact Finding Committee, Ministry of Irrigation and Power, Government of India, 1972.

## *APPENDIX*

### **CHRONOLOGY OF THE DISPUTE**

**1892:** First agreement between Madras and Mysore states for sharing Cauvery Waters.

**1924:** A 50 year agreement worked out between these two states.

**1974:** Agreement lapses and the four riparian states of Cauvery viz. Karnataka, Tamilnadu, Kerala and Pondicherry fail to reach a new agreement.

**1983:** National Water Resources Council was set up with the objective of laying down the National Water Policy and reviewing its implementation in the next 20 years. (It met only thrice till now and no policy was formulated).

**1990:** Dispute referred to CWDT (Cauvery Water Dispute Tribunal)

**June, 1991:** CWDT in its Interim Order directed Karnataka to release 205 tmcft per year, also laid down a monthly schedule. Karnataka rejected the Tribunal order saying that old users rights cannot be permanent because it was a late starter in agriculture development.

**December' 1991:** About 30 died in riots that broke out in Karnataka protesting against CWDT decision.

**July, 1993:** Ms. Jayalalitha went on an indefinite fast demanding Centre's intervention to ensure implementation of the Tribunal's Interim Award. She ended her fast when the Centre assured that two expert committees would be set up: one to monitor technical parameters of water sharing and another

an implementation committee. (However, nothing is heard about these committees till now).

**December, 1995:** Tamil Nadu approached CWDT which ordered release of 11 TMC water. As Karnataka refused to comply with, Tamil Nadu approached the Supreme Court.

**December 28, 1995:** Supreme Court asked the PM to settle the matter by convening a meeting of the concerned Chief Ministers.

**January, 1996:** PM asked Karnataka to release 6 TMC water and formed an expert committee to suggest a solution.

**February, 1996:** National Water Resource Council (NWRC) meet was convened which could not evolve guidelines due to differences.

**July 1996 :** Supreme Court directed CMs of both the states to try and find an amicable solution for that year.

**September 1996 :** At the behest of the Supreme Court, both the states held talks to sort out sharing of Cauvery river water amicably but nothing concrete emerged.

**May 30, 1997 :** The Union Government issued a draft notification which envisages formation of Cauvery Review Authority to ensure the implementation of the interim order of the Cauvery Water Dispute Tribunal, passed on June 25, 1991 in response to the Supreme Court's directive to the Central Government on April 9, 1997.

**September 30, 1997 :** At a meeting of the Irrigation Ministers of the Cauvery Basin states, Karnataka has strongly opposed a draft scheme to set up a Cauvery river authority to implement the Interim Order of the Cauvery Water Dispute Tribunal.

**June 1998 :** Chief representatives of the four riparian states hold talks in New Delhi but nothing fruitful emerged from the meeting.

**July 21, 1998 :** The SC adjourns hearing to August 12, 1998, in the case relating to Cauvery Water Disputes tribunal's interim award and directs the Centre to take necessary steps to frame a draft scheme to implement the interim award.

**August 6-7 1998 :** Broad agreement reached on August. 7 at a meeting of the CMs of the four riparian states convened by the Prime Minister in Delhi.

**August 11, 1998 :** Centre notifies the Cauvery scheme.

**August 12, 1998 :** Centre submits the notification in the SC.

**August 17, 1998 :** A Five-Judge Constitution Bench of SC disposes of the Tamil Nadu case without passing any orders.