



**THE HINDU CENTRE**

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Politics and Public Policy

Interview



## The available Cauvery waters will have to be divided on a pro rata basis: Duraimurugan

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Sep 26, 2016



Aerial view of the Cauvery River on June 30, 2008. Photo: R. Ragu

[The Hindu](#)

*The Karnataka government's refusal to release water to Tamil Nadu despite a Supreme Court ruling has added a new and crucial angle to the Cauvery water sharing dispute between the two States. A former Public Works Department (PWD) Minister of Tamil Nadu, **Duraimurugan**, traces the gradual escalation of the bilateral water sharing issue into a crisis involving constitutional law. In an interview to The Hindu Centre for Politics and Public Policy's Senior Coordinator, **Saptarshi Bhattacharya**, Duraimurugan says that given a larger constitutional question on the extent of the jurisdiction of the Supreme Court and how binding its orders are on governments, time has come to discuss constitutional law once again. Excerpts:*

**You have served for a long time as a PWD [Public Works Department] Minister in Tamil Nadu. During your three tenures as PWD Minister what was your experience in handling the Cauvery issue which is very contentious and now has become even more emotive between Karnataka and Tamil Nadu?**

Even before my term, around 1967 when the DMK [Dravida Munnetra Kazhagam] came to power, the problem had begun. The Karnataka government tried to construct dams around that time. That is when the problem started. At that time, people did not know much about it. Water kept flowing by and nobody bothered about it. So, when you construct a dam across the river, it will lead to obstruction of water that is meant to flow into the Cauvery delta.



At that time, *Kalaignar* M. Karunanidhi [president of the DMK and former Chief Minister of Tamil Nadu] was the PWD Minister under our Anna (the late C.N. Annadurai, founder of the DMK), who was the Chief Minister. First, he wrote a letter to the Karnataka government. Veerendra Patil was the Chief Minister there. He held the PWD portfolio also. So, the first meeting was held between *Kalaignar* and Veerendra Patil. Before that, nobody knew much about the issue.

During that time, Veerendra Patil behaved very generously and water was immediately released. Even then, there were problems being created here and there. That is why, when our leader became the Chief Minister, he wrote so many letters to the Karnataka government. The Centre did not intervene then; the problem was only between Karnataka and Tamil Nadu. He (Karunanidhi) also ghost-wrote some of the letters, but Karnataka went ahead with construction of dams.

Therefore, the only solution was to form the Cauvery Water Disputes Tribunal to work out a solution between Karnataka and Tamil Nadu. He wrote a letter to the Central government and we passed a resolution in the Assembly as well. There were litigations going on then, and the Chief Ministers and PWD ministers of the two States were also meeting—at that time, *Kalaignar* was holding the PWD ministry. So, the conversation was only between Karnataka and Tamil Nadu.

We then told the Central government that we wanted the Water Resources Ministry to solve the problem. At that time, one K.L. Rao was the (Union) Irrigation Minister. He was a well-known irrigation man. He came and assuaged them also. But he could not provide any fruitful result on Cauvery.

After that, Jagjivan Ram [the then Union Irrigation Minister] came. He asked one question: “You want more water; he wants more water. How much water is there? Can you tell? If you don’t know the quantum of water in Cauvery, how can we divide and give you? First of all, find out from Talakaveri [in Karnataka] to Lower Anaicut [in Tamil Nadu] how much water is there in 25 per cent dependability, 50 per cent dependability and 75 per cent dependability. Then you have to divide.” *Kalaignar* was the Chief Minister then. Jagjivan Ram asked our Chief Minister to form a fact-finding committee to find out the quantum of water in Cauvery.

If my memory is correct, this is in 1972. They (the fact-finding committee) came out with a report on how much water was there. Again there were problems raised over how much here (Tamil Nadu) and there (Karnataka). There were so many formulas. If Karnataka accepts, Tamil Nadu will not accept. This was going on. Even then, we used to go to Karnataka if we need water. If we went to the Supreme Court, it would take a long time. So, we would rush to Karnataka. Later, when I was holding charge of PWD, I would be asked to go and I would go and meet the Irrigation Minister and Chief Minister there (Karnataka).

At that time, they used to behave sympathetically. They would understand that the paddy crops would die if there was no water. So they would say, "Don't tell anybody. I will release water in the night time." H.K. Patil, Veerendra Patil would all do this. [Former Karnataka Chief Minister, S.M. Krishna also did this to some extent.]

Once when V.P. Singh was the Prime Minister, the Supreme Court asked the central government, "What is your idea? Tell us. This has been prolonging for years together." He (the then PM) asked the Chief Minister of Tamil Nadu. We said that there is no result coming out of talks. The only solution would be to set up a Tribunal. So, the central government told the Court that all discussions have failed. Give us a directive and we are ready to follow that.

The V.P. Singh government said that they wanted a Tribunal. And then, for a while, everything was fine. The Tribunal said that 740 TMC ft. (thousand million cubic feet <sup>1</sup>.) water was there. Tamil Nadu will take 419 TMC ft., Karnataka 270 TMC ft., Kerala 30 TMC ft., Pondicherry 7 TMC ft., environmental needs 10 TMC ft., and run off to sea 4 TMC ft.

**We have seen the progress of this issue over the years. It was first dealt with bilaterally, but later the Centre and the courts had to intervene. It was primarily a farmers' issue. But gradually, the farmers are out of the picture and what we see today is competing chauvinism between Karnataka and Tamil Nadu. When did this happen?**

Initially, there was no such agitation. When the Tribunal passed its interim order to release 205 TMC ft. of water for Tamil Nadu, there was strong agitation. Now it has become political, both here and there.

**When did it become political?**

In the beginning, the two governments talked. Farmers were also present in the bilateral talks. They were not involved in any problems. They depended on the governments. Bilateral talks did not provide any solution to them. Even after the forming the Tribunal, they saw that they will not get any gain because court cases were going on. The Karnataka government did not respond to the court orders. The first agitations started in Karnataka not to release water.

**How have the agitations in Karnataka affected Tamil Nadu's prospects?**

The government there is not cooperating to release water. I saw in the newspaper that Karnataka has taken a decision to straight away oppose the Supreme Court order. I was taken aback, because in the system of governance, the Supreme Court is the legal authority. If the elected popular government is not going to obey the order of the Supreme Court, then what about the citizens? It is undermining the judiciary.

Once, long ago, top academics in the country debated on whether the present system of governance is good for this country or the presidential system of government. In the federal system, if an elected government does not give any respect to the Supreme Court, then what will you do? The Supreme Court should take strong action. They should give direction to the central government to invoke Article 356 against the State government; [but] if they do that, the people will side with that government. They will come to power again. What will you do then? Now, the Cauvery issue has gone on to become a constitutional issue.

The problem is only between Tamil Nadu and Karnataka. The whole country should think over this one. It is not a joke. If I say something against the court, they will file a contempt case and put me in jail. But here, the government is saying that. I saw in the newspaper that Deve Gowda, a man who was the Prime Minister of this country, says

the Supreme Court has gone beyond its limits. He knows the separation of power between the judiciary, the executive and the legislature.

### **Report of the Cauvery Water Disputes Tribunal with the Decision**

- **Volume I** - [Background of Dispute and framing of Issues](#)
- **Volume II** - [Agreements of 1892 And 1924](#)
- **Volume III** - [Availability of Water](#)
- **Volume IV**- [Principles of Apportionment and Assessment of Irrigated Areas In The States of Tamil Nadu And Karnataka](#)
- **Volume V**- [Apportionment of the Waters of the Inter-State River Cauvery](#)
- **Final order**- [Final Order of Cauvery Water Disputes Tribunal](#)

### **The Helsinki Rules on the Uses of the Waters of International Rivers**

The Supreme Court can go beyond its limit, because nobody can question the Supreme Court. If the executive goes beyond its limit, the Supreme Court will question it. If the legislature goes beyond its limits, then the Supreme Court will question it. But we have to accept that if Supreme Court goes beyond its limit, there is no other apex court in India to question the Supreme Court. So you can do wrong. The Supreme Court can do no wrong.

**The Tribunal order has left some ambiguity in the distress sharing formula. Do you think that is the main reason why the problem persists?**

The Tribunal has said that the Cauvery Management Board should decide at the time of distress on a pro rata basis. The Management Board has constitutional validity. It is equal to a Supreme Court judge. If the Tribunal or the Management Board passes an order, the Supreme Court also cannot intervene in it. It is equal to the Supreme Court. As a student of constitutional history, I can say that the Tribunal is equal to the Supreme Court, the Tribunal order is equal to a Supreme Court order. And the Supreme Court has no jurisdiction to alter the order of the Tribunal.

There is no provision given by the Tribunal to form a Supervisory Committee to look into the Cauvery issue. But the Supreme Court goes beyond its limit and forms a Supervisory Committee. I said that in the beginning that the Tamil Nadu government should state in court that there is no provision, and that the order of the Tribunal cannot be changed. We prayed for a Management Board, you are giving us a Supervisory Committee. I am not asking out of turn. We are entitled. The Supreme Court has no power to get into the Tribunal order. That is wrong of the Supreme Court.

**The water sharing formula arrived at by the Tribunal is a specified quantity. Do you think that a formula based on a share of the availability of water could have been a better way to arrive at the apportionment?**

They will have to divide the available water on a pro rata basis. They will take readings in all the reservoirs, calculate it and arrive at the ratio. The Management Board should be doing it.

**Now that the Supreme Court has set a time frame for setting up the Management Board, will that make a difference?**

I am going beyond all these questions. The Cauvery Management Board can command the Basin States, it can pass order, it can even punish. They (Karnataka) are not heeding the Supreme Court order, what will you do if they don't accept Management Board order? When the interim order was passed, when [Atal Bihari] Vajpayee was the Prime Minister. He told our Chief Minister that the interim order was passed and to implement it, we should form

an authority. So we all went there, except for [present Chief Minister of Tamil Nadu] Jayalalithaa. This was the Cauvery River Authority headed by Vajpayee.

I am surprised that today a government says that it is not bothered about a Supreme Court order. What if history repeats itself tomorrow? Tomorrow, if the order given by the Management goes against one State, and the government there does not pay heed, what will you do? So, a time has come to discuss Constitutional Law once again.

**The Cauvery movement had a healthy exchange between the civil societies of both States through an organisation called the Cauvery Family. It started in 2003 with a bunch of academicians and farmers as its members but were forced out of the equation post-2011 after the movement turned more emotive. How do you think the movement can be depoliticised so that ideas could once again flow freely between people who hold higher stakes, like farmers?**

People with deep knowledge in irrigation and other social issues who are outside politics, for example academics, can give ideas to farmers and the government. The governments should support them. There are many who have done their PhD on water management. Now, A. Mohanakrishnan is too old, but he is still one of the leading persons in this subject. So many people are there who are not in politics but in academia. Such people can give us ideas.

**Some unconfirmed reports suggest that the violence, vandalism and arson in Karnataka were perpetrated by the opposition parties, especially the Sangh Parivar affiliates. So, the Cauvery issue seems to be a favourite among political rivals to score over the others as well. What are your views?**

See, without politics nothing will happen in Tamil Nadu. All the political parties are waiting for something to happen. When they get the chance, they will mingle with them. I am not sure how much the Sangh Parivar took part in the agitation [in Karnataka]. But I will not deny it, because Sangh Parivar could be there, or some other parivar could be there. Political opposition in Karnataka are trying to give a bad name to Siddaramaiah. He is a very clean man, not corrupt. Everybody is angry about the issue. So they will direct the anger against him.

**Note:**

1.^ TMC ft. is "an abbreviation for "thousand million cubic feet," commonly used in water management in India. One TMC ft., is equivalent to about 28.317 million cubic meters or 22 956.8 [acre feet](#). One TMC ft./day is about 11 574 cubic feet per second or 327.74 cubic meters per second." [Source: [How Many? A Dictionary of Units of Measurement](#), © Russ Rowlett and the University of North Carolina at Chapel Hill.] Accessed: September 24, 2016. (The headline of this article was updated on September 26, 2016, to correct an editorial error.)

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