INTRODUCTION

Water is the most important natural resource for mankind; all living beings in air, water and land like animals and birds; besides all vegetations, plants, trees and crops. Without water no cultivation and growth of forests, trees and consequently sustenance of life creations is possible. Water, rivers and storages are everywhere in the world for all to use and grow. Hence the poet Thiruvalluvar praised water in his *Kural* as follows:

\[ \text{ePh;\,d;}W \text{mikah}J \text{cynf}dpd; \text{ahh;ahh;}f;Fk; \]
\[ \text{thd;\,d;}W \text{mikah}J \text{xOf;}F \]

*Fws; vz;: 20*

Great civilizations and cities developed initially and flourished only on the banks of the rivers. The Egyptian Civilisation (on the Nile), the Mesopotamian Civilisation (on the Tigris and Euphrates), the Indian Civilisation (on the Indus) and the Chinese Civilisation (on the Hawange). In South India particularly in Tamil Nadu, Cauvery is the major river, on the banks of which Tamil Civilisation rose and prospered.

The Scope of the Study

The present topic is entitled “The Legal Mechanisms for Resolving the Cauvery Water Disputes: A Historical Analysis with Special Reference to the 2007 Tribunal Verdict”. This study covers the historic agreements between the riparian States, river water sharing, the disputes, formation of Tribunal to resolve the dispute, the representations/arguments put by the parties concerned, Tribunal’s interim final awards and implementation of the awards. The study also covers the irrigation development, reservoir constructions in the basin States of Tamil Nadu, Karnataka and Kerala.
Methodology

The topic chosen for research mainly focuses on the water disputes between the riparian States. The archival sources including Government orders, report and institutional records are the major primary sources. Historical method is adopted for completing this study. Based on the available records, the tables and pictures have been prepared.

Objective

The present study covers the water disputes based on the following objectives:

(i) To find out the origin, tributaries of the river Cauvery, regional set up and process of disputes.
(ii) To expose the Agreement dealings of 1892 and 1924.
(iii) To bring out the ISWD Act and CFFC, and the Agreement of 1924 which was revised in 1974.
(iv) To trace the Tribunal and Final Order.
(v) To express the opinions of the Central, the State Governments and the Political parties.
(vi) To find out the effect of the water dispute problem and the only solution a National water policy.

Sources

The sources, used for writing the thesis entitled “The Legal Mechanisms for Resolving the Cauvery Water Disputes: A Historical Analysis with Special Reference to the 2007 Tribunal Verdict” is mostly original sources which are available in Tamil Nadu State Archives and the Connemara Library, Cauvery Technical Cell, Chennai. The original sources include both published and unpublished documents. The official publications are in the form of reports and proceedings. Madras State Administration on reports gives detailed
information about the historic agreements between the riparian States, the disputes, formation of Tribunal, river water sharing, the representations/arguments put by the parties concerned, Tribunal’s interim final awards and implementation of the awards, reservoir development in the riparian States.

Besides, the census report also forms other primary source. The secondary sources are available in the form of Books, Gazetteers, Journals, Newspapers, Website and unpublished Ph.D. theses.

**Review of Literature**

There are a number of records pertaining to irrigation, famine and public works of the Madras Presidency. Among them a five-volume publication of the Government of Madras called *Papers Regarding Cauvery Reservoir project* (Madras, 1910) reveals the facts and figures of the Cauvery Mettur project. As it is a Government report it does not contain any critical assessment of the project. Another publication of the Government of Madras, the *Cauvery Committee Reports*, (Madras, 1923), throws light on the pre-Cauvery Mettur project irrigation system in the delta area and the flow of water in that area. It is helpful to make an assessment of the benefit of the project by a comparison between the pre-project and the post-project periods. A published pamphlet on the *Madras Mysore Agreement of 1892*, the exhibits filed by the Mysore Durbar under the title *Mysore-Madras Cauvery Arbitration 16th July 1913 to 13th May 1914* and a published work on the *Final Agreement between the Mysore and the Madras Governments in Regard to the Construction of a Dam and a Reservoir at Krishnarajasagara 18th February 1924*, provide the details about the controversy between the Mysore and Madras Governments over the sharing of the Cauvery water. It is with the background of these documents that we understand the true nature of the Cauvery river water dispute. While the publication *The Proceedings of the Madras Legislative Council from 1921 to 1934* brings out the concern of the political elite over the proposal and execution of the Cauvery-Mettur project,
the documents known as *The Famine Commission Reports of 1866-67 and 1892* give a general picture of the economic condition of the State during droughts and famines. They narrate the circumstances in which importance was given to the improvement of irrigation in the State. *The Irrigation Commission Reports of 1901-1903 and 1972* elaborate the steps taken by the Government of India to improve irrigation on the basis of their recommendations. Besides these documents, the *Reports on the Administration of Public Works Department (Irrigation), Reports on the Administration of the Madras Presidency*, the orders of the Government of Madras in the Departments of Revenue, Public, Public Health, Railways, Public Works and Labour, from 1881 to 1953 provide detailed information regarding this project.

The few studies available on the subject, such as Cauvery from Source to Sea by K. Nagarajan (New Delhi, 1975), trace the origin of the river and the main tributaries that join it. An account of the legends about the Cauvery is available in this book. But it describes only the course of the river and does not deal with the controversies that have arisen since the taking up of the project. An economic analysis of agriculture, crop pattern, livestock and other occupations in the project and non-project area has been made in *Benefit-Cost Evaluation of Cauvery-Mettur Project* by K.S. Sonachalam (Annamalai University, 1961). It is a report of the Research Programmes Committee of the Planning Commission, Government of India. There are works like *Influence of Mettur Irrigation and Hydroelectric Project on Agriculture and Agro-Industries* by S. Krishnamoorthi (1956-57), Research Programmes Committee of the Planning Commission, Government of India, and *Economics of Irrigation and Water under Cauvery-Mettur Project* by the Agricultural Economics Research Centre, (University of Madras, 1961) which are helpful in understanding the agrarian structure as well as the rate structure. These works are basically micro studies meant to bring out certain aspects of the economic changes in the delta area after the Cauvery-Mettur
Project at a particular point of time. A more recent study under the title *Water Resource Management in South India: Irrigation and Hydro-Electric Power in the Cauvery River Basin 1878-1939* by Loren Howard Michael (unpublished doctoral thesis of the University of Wisconsin-Madison, 1979) traces the development of irrigation, hydroelectric power development and broader arrangements for the management of water resources in the entire South India during that period with particular emphasis on policy matters. A comprehensive work written by C.G. Barber entitled *History of the Cauvery-Mettur Project* (Madras, 1940) appears to be nothing more than an official compilation of the already available papers about the Cauvery Reservoir Project. It was an easy task for him to compile such a work as he served as the Superintending Engineer in the Public Works Department. He stopped his work with the execution of the Project. However, the work is highly useful in the sense that it supplies a great deal of information on various aspects of the project, in the context of the persistent controversy over the sharing of the Cauvery waters between Madras and Mysore.

Among them a five-volume *The Report of the Cauvery Water Disputes Tribunal with the Decision*, (New Delhi, 2007) deals with the agreements between the riparian States, Tribunals, interim final awards are discussed. The few studies available on the subject, such as Cauvery from source to sea by S. Guhan *The Cauvery River Disputes* (Madras, 1993) trace the origin of the Cauvery River, ayacut developments, the controversy between the Mysore and Madras State Governments. A comprehensive work written by R. Balakrishnan entitled, *Cauvery Judgement*, (Chennai, 2007), N. Natarajan, *Cauvery Nathi Neer Pankeedu*, (Trichy, 2008), deals with the controversies, agreements, political and Government as the criticism, final awards, verdict of Cauvery are discussed.

**Design of the Thesis**

The thesis is divided into five chapters. Under introduction, description of topography of the area over which Cauvery flows, rainfall data in catchment areas,
The first chapter deals with the origin of the disputes, Durbar, Cyclone flood the existing irrigation works, Agreements, Act, Amendments

The second chapter gives a brief survey of 1892 and 1924 agreements between the States of Mysore and Madras and the circumstances which led to the same including disputes arising out of proposals made by both the States for irrigation betterment projects.

The third chapter deals with the problems arising out of Tamil Nadu and Karnataka taking up construction of anicuts/reservoirs in their areas in the absence of a new agreement in the place of 1924 agreement which expired in 1974, efforts of the Central Government to reach a negotiated settlement through formation of Cauvery Valley Authority and Cauvery Fact Finding Committee.

Fourth chapter discusses in detail the interim and final award of Cauvery Water Tribunal.

Fifth chapter records the reactions of the political parties Congress, BJP, Communist, DMK, AIADMK, MDMK, PMK organizations in both States of Tamil Nadu and Karnataka.

In the conclusion deals with the such a parliamentary law is enacted the central government can establish a project for linking of National Inter-State rivers. If such a project were to be established the dispute will come to an end.

The river Cauvery, named after Kaveri, the daughter of a sage known as Kavera\(^1\) has become famous with the people of Tamil Nadu. There are several legends about the name Cauvery. Among the several meanings given to Cauvery,

\(^{1}\) K. Nagarajan, *Cauvery from Source to Sea*, New Delhi, 1975, P. 19.
the one given by K.L. Rao seems to be practical and true. In Tamil ‘ka’ means garden and ‘eri’ means tank, thus Cauvery would mean a river which has its sources in a garden tank. It is also called ‘Ardha Ganga,’ meaning half Ganges.\(^2\) (The Ganges is one of the holy rivers for the Hindus). The river Cauvery rises near Mercara in Coorg at an elevation of 4,400 feet above the sea level.\(^3\) The surroundings near the source of the Cauvery look like a garden. The explanation of the origin of the Cauvery seems as imaginative as it is convincing enough.

The Cauvery river is one of the largest in Southern India. It starts in the Western Ghats near Mercara in Coorg, Karnataka. The river drains the eastern slope of the Western Ghats and flows nearly 800 km long eastward, and finally enters the Bay of Bengal at Tharangambadi (Tranquebar). It flows 280 km in Karnataka State and the remaining 512 km in Tamil Nadu.\(^4\) It has a drainage area of 87,900 sq. km. of which Kerala has 3.3 per cent, Karnataka 41.2 per cent and Tamil Nadu 55.5 per cent.\(^5\)

The Cauvery river increases in its flow once in a year. This is due to the southwest monsoon which extends from June to September. During these months there is a heavy rainfall in the Western Ghats which is the catchment area of the Cauvery. Usually in August the overflow is celebrated by the Tamils as the “eighteenth increase.”\(^6\) This large discharge of water by Cauvery and its tributaries induced the administrators to use its waters for irrigation. The fluctuating rains during the months of August, September and October make the flow of the river continuous.

The flow of Cauvery is augmented by its tributaries Karangi, Hemavathi, Shimsha, Arkavathi, Lakshmanathirtha, Kabini and Swarnavathi in Karnataka.

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Several less important streams carrying the northeast monsoon rain waters join the mainstream of the river before the Cauvery reaches the Hogenakkal falls near Dharmapuri, where it enters the territory of Tamil Nadu. Three minor tributaries, the Palar on the West and Chinnar and the Thoppaiyar on the East, join the Cauvery near Mettur. Then the Cauvery is joined by the rivers Bhavani, Noyyal and Amaravathy in Tamil Nadu.  

**Course of the River**

The Cauvery is intercepted by the Krishnarajasagara dam (Kannambadi dam), 19.2 km to the north-west of Mysore city. At Sivasamudram situated lower down the river on the Tamil Nadu Karnataka border, is a hydroelectric generating station getting a regular and sufficient supply of water from Cauvery near Tiruchirappalli the Cauvery becomes wide with a sandy bed and flows in an easterly direction. There is the Upper Anicut across the river. It divides itself into two branches below the Upper Anicut. The northern branch is called the Coleroon and the Southern branch the Cauvery. Some 16 km below Tiruchirappalli the two branches again join to form the Srirangam Island. At their junction the Grand Anicut forms the head of the great irrigation system in Thanjavur district. Below the Grand Anicut the Cauvery becomes one of the three regulated streams, and ultimately discharges into the Bay of Bengal some 12.8 km north of Tharangambadi (Tranquebar) as an insignificant stream, the whole of its waters having been fully utilised for irrigation.  

The life-giving and fertilising waters of the Cauvery have been mostly used by the deltaic district of Thanjavur since the beginning of recorded history. The surplus waters after Upper and Grand Anicuts not required for irrigation are diverted into the Coleroon by means of regulators. Here the Lower Anicut regulates the water into three canals. The river continues

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then in a north-easterly direction. It discharges into the Bay of Bengal at a place, a little south of Porto-Novo.10

Rainfall and Agriculture

During the south-west monsoon which starts in July-August, the samba cultivation begins. During the north-east monsoon, kuruvai sown in June-July would have been harvested and, the thaladi would begin. The variation in rainfall could damage the crops on account of the floods in certain years and lack of water in other years.11 This has been somewhat regulated following the construction of the Cauvery-Mettur Project.

Rainfall has greatly influenced the agricultural operations of the peasants’ in the Cauvery river basin as elsewhere in India. Agriculture has been the principal occupation of the people living near the river bed since the dawn of civilization with paddy as the major crop of cultivation. There is therefore little wonder that rice has been the staple food in South India. There are three seasons for growing paddy in samba, kuruvai and thaladi. Samba is a six month crop. Kuruvai seeds are generally sown in June-July and Thaladi in September-October. Samba cultivation begins in August-September and is harvested in January-February. However, with the modern advances made in agriculture, kuruvai, samba and thaladi have lost all significance. The installation of bore wells has freed at least the enlightened farmers from depending on the vagaries of monsoon.

Irrigational Importance of Cauvery River

Since the Chola rule Thanjavur has been regarded as the granary of South India12 because the Cauvery fertilizes the cultivable lands in that area every year with its freshes. The story of irrigation in Tamil Nadu takes us as far back as the

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period of *Silappadikaram*, the great Tamil epic. It is said that a Chola King, named Kanthaman, seeing his country suffer from drought took steps to bring the Cauvery water to his country. He was probably one of the earliest to have realized the importance of irrigating the lands with the river water.\(^\text{13}\)

It was also claimed that the Chola kings understood the meaning of the proverb “Raise the ridges, the fields improve; cultivate the fields, kings prosper.” This Tamil saying has great many meanings suitable for all times. Agriculture forms the basic and solid foundation of Indian economy. Agriculture without irrigation is beyond imagination. Therefore, right from the early times there have been schemes and methods to harness the waters of the Cauvery and utilize them to the fullest possible extent. It is claimed that the earliest among them was the crowning achievement of Karikala Chola (c. A.D. 50-95). It is stated that he was the first king to harness Cauvery waters purposefully for better use in his kingdom. It is also claimed that he constructed the Grand Anicut across the Cauvery which was subsequently strengthened by a later Chola ruler Vira Rajendra also called Karikala.\(^\text{14}\)

Thus it is clear from the above mentioned historical information that the Chola kings evinced a keen interest in protecting and promoting the irrigation system of the country. The Cholas, irrigation in these areas was badly neglected on account of wars and political changes. The condition remained one of inundation rather than controlled irrigation system. Therefore the irrigation system was subject to the vagaries of the river Cauvery. This sad state of affairs continued until the British rule.\(^\text{15}\) After taking over the administration of the Madras Presidency became concerned about the dwindling returns in the land

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revenue and attempted to take a few corrective steps to reestablish the satisfactory irrigation condition in order to improve the company’s cash resource base.¹⁶

Sand deposits formed the principal obstruction to the free flow of water in the river by 1800. In 1804 Captain Caldwell of the Engineers in the Public Works Department warned against the possible annihilation of the Cauvery as an irrigation system and the consequent rain of Tanjore.¹⁷ Efforts were made to remove the sand by using manual labour. Provision for scouring sluices was approved. But they proved expensive and ineffective.

**Famine in Madras Presidency**

In addition to the unsatisfactory irrigation conditions, droughts and famines were a recurring phenomenon with continued food deficit in the Madras Presidency. So the East India Company had to import rice, wheat and other food grains and pulses. The following figures give the periodical averages of imports of grains in quantity and value from several ports of Bengal to the several ports and places on the Coromandel Coast from 1796-97 to 1828-29.¹⁸

<table>
<thead>
<tr>
<th>Years</th>
<th>Average No. of Bags</th>
<th>Average No. of Mounds</th>
<th>Average Value (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1796-97 to 1800-01</td>
<td>3,56,189</td>
<td>7,21,378</td>
<td>6,93,047</td>
</tr>
<tr>
<td>1801-02 to 1805-06</td>
<td>5,55,495</td>
<td>11,10,990</td>
<td>11,12,873</td>
</tr>
<tr>
<td>1806-07 to 1810-11</td>
<td>6,24,916</td>
<td>12,49,812</td>
<td>13,29,812</td>
</tr>
<tr>
<td>1811-12 to 1815-16</td>
<td>3,55,124</td>
<td>7,10,247</td>
<td>7,12,208</td>
</tr>
<tr>
<td>1816-17 to 1820-21</td>
<td>97,732</td>
<td>1,95,464</td>
<td>1,95,464</td>
</tr>
<tr>
<td>1821-22 to 1825-26</td>
<td>2,87,794</td>
<td>5,94,364</td>
<td>8,63,735</td>
</tr>
<tr>
<td>1826-27 to 1828-29</td>
<td>39,364</td>
<td>78,306</td>
<td>1,24,523</td>
</tr>
</tbody>
</table>

The imports were heavy during the drought and famine years as is seen from the years 1801-1826. During the ten years between 1833-1834 and 1843-1844, the total value of paddy and rice imported to Arakon (Burma) was Rs. 1,08,14,248 of which Rs. 62,43,540 was the share of the six ports.\textsuperscript{19} There was a steady increase in imports of rice from Burma in the next sixty years. The inter-war period (1918-1919 to 1937-1938) saw further increase of import of food grains in general and rice in particular.\textsuperscript{20} This resulted in taking up the task of rapidly improving the irrigation. Besides the food deficit, famines often caused irreparable damage to the economy of the Madras Presidency. There were famine in 1860-61 and a drought in 1865. They were followed by another famine in 1866. The cumulative effects of these phenomena were realised by the Government only during the great famine of 1877-78. It led to the setting up of a series of famine commissions. The first famine commission of 1878 suggested certain measures on the basis of which the famine codes were promulgated from 1883 onwards. It emphasised the need for direct State initiative in the development of irrigation particularly in the vulnerable areas. The good agricultural prospects of the years from 1880 to 1895 slowed down the acceleration of irrigation development. But the two great famines of 1897-98 and 1899-1900 left the Government with no alternative but to initiate positive measures against drought and famine over large areas. An Irrigation Commission\textsuperscript{21} under the Chairmanship of Cohn Scott Moncrieff was appointed in the year 1901. The Commission’s report submitted in 1903, laid emphasis on the improvement of irrigation works. In consequence the Government of India came forward to sponsor and fund several irrigation projects. At the same time the Madras Engineers investigated the available irrigation facilities of the presidency and proposed a number of projects. The Cauvery-Mettur project was one of them.

\textsuperscript{19} \textit{Ibid.}, pp. 2-5.
\textsuperscript{20} \textit{Ibid.}, P. 7.
Cauvery Irrigation System

Even as 1828 Captain Arthur Cotton was deputed by the East India Company to study the state of rivers and the irrigation systems in the Cauvery delta for purposes of ensuring proper irrigation.\textsuperscript{22} One of his suggestions was the strengthening and repairing of the Grand Anicut. He was very much impressed by that Anicut which inspired him to launch upon the construction of Dawlaishwaram Anicut across the river Godavari. He proposed the construction of Upper and Lower Anicut on the Cauvery\textsuperscript{23}.

The Upper and Lower Anicuts resulted in better utilisation and regulation of the river water. And the subsequent construction of a series of regulators led to the system of irrigation being regulated to a considerable extent. This doubled the extent of land under irrigation during the 19\textsuperscript{th} century. But great defect that still persisted was the under-utilisation of vast supply of water during the south-west monsoon in the delta. Yet another difficulty was the unpredictable nature of the south-west monsoon leading either too much or too little supply of water. This resulted in the occasional retardation or failure of the first crop in July-August.\textsuperscript{24} When there were occasional floods in the Cauvery usually during the south-west monsoon, great damage was caused to the lands. It was therefore felt that these problems could be solved by means of a reservoir, where surplus waters could be stored and utilised\textsuperscript{25} when needed. The river Cauvery has a drainage area of 87,900 sq.km. Cauvery is thus an inter-state river with an unique characteristic geographical layout in that its upper hilly catchment lying in the Karnataka and Kerala States is influenced by the dependable South-West monsoon during the months June to September, while its lower part lies in the plains of the Tamil Nadu State served by the not so dependable North-East monsoon during the months

\begin{flushleft}
\textsuperscript{22} C. Ramachandran, \textit{Op.cit.}, P. 80.  \\
\textsuperscript{23} K.S. Sonachalam, \textit{Op.cit.}, P. 1.  \\
\textsuperscript{25} \textit{Ibid.}, P. 21.
\end{flushleft}
October to December. The origin of the dispute between Karnataka and Tamil Nadu on the sharing of the Cauvery waters can be traced back to the year 1807.

In 1892 an agreement was concluded between the two Governments to share the waters of Cauvery many provisions of which were adverse to the interests of Mysore. Apart from imposing on Mysore, restrictions on the utilization of the Cauvery water’s the Madras Government had made it a rule that without obtaining its prior permission no irrigation work should be undertaken by Mysore in the Cauvery basin. This agreement in the form of rules specifically brought construction of new irrigation reservoirs and even repair of existing irrigation reservoirs to be cleared by Madras Government before execution.

In 1924 an agreement was executed on behalf of the Government of Madras and the Mysore Durbar which finally settled the longstanding disputes relating to the utilization of the waters of the river Cauvery. The agreement of 1924 enabled the construction of Mettur reservoir by the Madras Presidency and the Krishnarajasagara by the Princely State of Mysore.

Mysore apprehended, that since 1924 agreement was to be revised in 1974, the new use of the river by Madras might create prescriptive rights in favour of Madras. Finally in 1974, a draft agreement which also provided for the creation of a Cauvery Valley Authority was prepared by the Ministry of Irrigation. In 1976, after a series of discussions between the two States and the Central Government chaired by Jagjeevan Ram, the Irrigation Minister a final draft was prepared based on findings of the Cauvery Fact Finding Committee (CFFC). This draft was accepted by all States and the government also made an announcement to that effect in Parliament. Tamil Nadu came under President’s Rule soon after that and the agreement was put on the back burner. The farmers belonging to the Tamil Nadu filed a writ petition on 26th November, 1983 in the Supreme Court for issue of a writ of mandamus to the Central Government requiring it to refer the dispute to a Tribunal under the Act and for the protection and enforcement to their
rights to an appropriate share in the water of Cauvery river. Under the above mentioned direction of the Supreme Court, the Union Government, on 2nd June 1990, constituted a Tribunal, under the Inter-State Water Disputes Act of 1956. The reaction in Karnataka to the Tribunal’s Interim Order of 25th June, 1991 was extremely adverse. The quantum of 205 TMC.ft. for inflows at Mettur was considered excessive, the assurance of the quantum to Tamil Nadu subject to a stipulated pattern of monthly release. The Tribunal as far as the shares of the different riparian States are concerned. Final order and decision of the Cauvery Water Disputes Tribunal on 5th February 2007, after 17 years of hearings all along awaited verdict of the Cauvery Water Disputes Tribunal was announced of the 740 TMC.ft. welcomed it as it brought to an end a long legal battle between the States. Karnataka have called for a State-wide Bandh to show their anger over what has been termed as a biased final verdict of the Cauvery Water Disputes Tribunal. An overall assessment is given in the conclusion.