Chapter IV

Origin and Nature of the Inter-state River Water Disputes in India

In India to resolve the inter-state river water disputes, the provisions as given under Indian Constitution are tending towards resolving disputes beyond the traditional judicial decision making process. At the same time, by implication, constitutional provisions also indicate that inter-state river water disputes is not just an ordinary class of disputes. Therefore, in order to appreciate the inter-state river water dispute problem in India and to make a meaningful analysis of the same including legal solution thereof, the study of the nature and historical development of few such critical problems is highly needed.

India is a land of inter-state rivers. Except for some of the small rivers flowing westward from the Western Ghats and eastward from the Eastern-Ghats, all the principal rivers of India, many of their tributaries and sub-tributaries, are inter-state rivers; some of them are also international. For example, within India, the Indus river basin includes Kashmir, Punjab, parts of, Himachal Pradesh, Haryana and Rajasthan. The Ganga and its tributaries run
through Himachal-Pradesh, Haryana, Delhi, Uttar-Pradesh, Rajasthan, Madhya-Pradesh, Bihar and West-Bengal. The Brahmaputra river rises in Tibet and flows through Assam. The Mahanadi flows through Madhya-Pradesh and Orissa. The Narmada and the Tapti flow through Madhya-pradesh, Maharashtra and Gujrat. The Krishna river drains parts of Maharashtra, Mysore and Andhra. The cauvery flows through Mysore and TamilNadu. Smaller rivers like the Damodar, the Mahi, the Pennar, the Subarnrekha and the Brahmani are also inter state.

India is fortunate in having plenty of rivers which are reasonably well spread over its territory except the desert in Rajashtan in the north-west. But mere existence of many such rivers have not ensured even distribution of water in all parts of its territory and has not mitigated the massive ongoing demands of river waters due to the dearth of the natural supply of water on such rivers. As a result, river water in India still remains a stochastically limited renewable resource. The country enjoys an average rainfall of about 110cms which if distributed over the country’s land area of 328 million hectares gives a total precipitation of 3,700 billion cubic metres whose 33 percent is lost due to evaporation, 22 percent seeps into the ground and 45 percent flows through surface runoff\(^1\) out of total 188 mham average runoff of India’s river system as it is estimated by central water commission in 1972, after

\(^1\) Sukhwai B L., ‘River Water Management and Disputes in India’, National Geographer, vol XIV, No 2, December, 1979, p 1
the assessment by Dr. A. N. Khosla in 1946 and by Dr. K. L. Rao in 1973, the utilizable water resources are only 87 mham including 20.4 mham of groundwater.\footnote{Vergre B.G., Waters of hope. Oxford and IBM co pvt. Ltd., New Delhi, 1989, P74.}

Rainfall in India is also seasonal, uncertain, unpredictable and erratic in nature. Nearly 80 percent of its occurring during four summer monsoon months (June to September) the remainder of the year is practically dry with only few places receiving rainfall during winter monsoon months (November to February). It shows wide variations in time and place. The variation is unparalleled in any other country, for example, in Western Rajasthan it is less than 25 cms, whereas near Dherrapunji (Meghalaya) the annual fall is more than 1270 cms. In certain unreliable rainfall areas, when the rainfall decreases to 80 percent or below, crop failures are common resulting into famines, drought which roughly occupy about one-third of the country's area.\footnote{Water Management: Some Useful Information: Yojana, vol. XXII, No. 9, 1978. New Delhi. P 7.}

Many of the Indian rivers are not perennial and show wide fluctuations in their flows during different parts of the year. The northern rivers are snowfed and are normally perennial, but the variation between the winter and the summer monsoon flows may be as high as 1:100 in the main rivers traversing the plains and 1:300 or more in small hill streams. About 80 to 90 percent of the annual runoff of the southern and central rivers take place during
the four summer monsoon months while during the remaining eight months of the year they are largely dry.\footnote{Supra Note I at P 108}

In India, prior to the arrival of the first monsoon rain, the evaporation from lakes and rivers is extremely high, as a result even perennial rivers shrink to a few metres and the land is parched by intense heat. Besides the draught that follows the first rain is so intense that the surface ground water is evaporated in a very short period, leaving no residential moisture in the soil. The daily mean evaporation in the country varies from about 2mm in the winter months in wet areas to as much as 16mm in the summer months in dry areas with the annual average for the whole country at above 6mm. In arid and semi arid regions especially in the western part of the country rainfall also is too meagre to support perennial streams.\footnote{Iqbal Ahmed Siddiqui, 'History of water laws in India', in Water Law in India, Chhatrappati Sing(ed). The Indian law Institute, New Delhi, 1992 P 289}

Water available through hydrological cycle over space and time as a limited renewable resource is no doubt a permanent factor for inter-states river water dispute in modern India. But in the past, it was not a very important factor. In pre-colonial ancient and medieval period water resources were much in abundance compared to its population and demands.\footnote{Ibid} In ancient period the socio-economic system and geo-political unit was in the form of small republics with self sufficient and autonomous villages. But
the history of India prior to say, the middle of the 19th century, is replete with instances of changing political boundaries, within the country, either because of conquest territory or because local chiefs became independent of a weak central authority. Even during the relatively stable conditions thereafter, several changes were made in the boundaries of what were known, prior to 1947, as the British Provinces of India. Just before independence, in 1947, India comprised 11 Governor’s Provinces, 3 Chief Commissioner’s Provinces and 562 Princely States of which 147 were fully empowered; in the rest the Crown exercised varying jurisdiction and power. 

Indian rivers have been flowing on the same route from time immemorial but development like, emergence of different types of geo-political units during colonial regime turned such rivers as inter-provincial or inter state and along with this development, population growth within the provinces and princely states; protective irrigation works as a preventive of the evils of famines; emerging demands for different geographies-territorial entities; which was ultimately recognized in 1935 Act, gave birth a number of inter-state river water disputes in colonial India. It has also been argued that expansion of irrigation work under taken by British in India exploded the myth and mystery behind water as a concept of

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flowing continuity and transformed water itself a commodity which meant so many "acre feet", so many "kilowatt-hours". This paradigm of mathematically modelled hydraulic environment precluded the concept of a partnership between maximising water uses and the state and gave birth a number of water disputes in colonial India.\(^9\) However, colonial government owing to her 'colonial logic', i.e., for increasing of wealth put too much emphasis on cooperative management and utilization of river water irrespective of the political boundaries of the British India and Princely states and undertook to construct a number of projects jointly. British Government also in case of dispute between different political units adopted the principle of resolving such dispute either by agreement or by order of the secretary of states who decided each case on its own merit. Decisions in one case did not constitute precedent or guideline for the other cases. It is also to be seen that during British Rule for construction of canals individual projects were taken up separately at different times, in different provinces and states and also there were some attempts at settling disputes which arose because of the interaction of different project but no master plan of development for the basin as a whole had yet been prepared.

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A. Ravi and Beas Water Dispute

All major inter-state river water disputes emerged after independent India, had their roots in Colonial India. The present Punjab, Haryana, Rajasthan dispute over Ravi-Beas Waters had also its root in pre-partition Indus river water dispute.

Before the partition of India on August 15, 1947, the rivers of the Indus Basin were mostly national rivers and therefore the planning of development and utilization of the water resources of the said basin did not involve any problem of international law though few disputes arose between British government and princely states and among princely states themselves. During this period a system of network of canals was developed in pre-partition Punjab. Under such a system the irrigation network of the Punjab came into being. It was developed by the provincial Governments after the government of India had impartially considered the interests of a large member of people widely separated territorially, and hence the available of water supply of its five rivers was apportioned in what was felt to be to the maximum advantage of all concerned. Accordingly, the Upper Bari Doab Canal, a perennial canal on the Ravi river, completed as early as in 1859, supplied water to about a million acres lying between Ravi and Beas. In the early eighties the Sutlej was tapped at Rupar by the Sirhind canal, and about the sametime the lower Sohag and Pura canal and the Sidhau canal were brought into use. The project for permanent headworks at Madhopur was undertaken in 1868 and
revised in 1874. Irrigation in the Jech Doab followed the opening of the lower Jhelum canal in 1901. The triple canals projects comprising the upper Jhelum Canal, the upper Chenub canal and the lower Bari Doab were completed in 1917.10

In 1919, the Sutlej Valley Project, the Sukkar Barrage Project, the Bhakra Project were planned. Next about in 1937 Haveli Project was prepared and executed. In the meantime, the Gang canal taking off from Ferozpur Head works was opened in 1927 to irrigate the areas in Bikaner. By 1932 all the canals of the Sutlej Valley were completed. The princely state of Bahalwalpur objected to the supply of canal water to Bikaner, or non-riparian princely state and Sind province being apprehensive of resultant shortage of water at Sukkur Barrage objected to the construction of Bhakra projects. The Sind-Punjab controversy led to the setting up of Rau-Commission.

With relatively high developed of the Western Punjab canal network in comparison with Eastern Punjab, the partition of India on August 15, 1947 created two independent sovereign states, namely India and Pakistan and the new international boundary also bisected the entire Indus Basin or Indus System of Rivers. Thus the upper reaches of Indus River and its eastern tributaries, the Jhelum, the Chenub, the Ravi, the Beas and the Sutlej fell in India whereas

their lower reaches found their location in Pakistan. The vast network of canals fell in Pakistan but certain installations and headworks which fed then remained in India.\textsuperscript{11}

With the partition of India, disputes over Indus River system assumed two forms i.e., international and inter-state. World Bank offered its good offices to help in finding a solution of the Indus River dispute between India and Pakistan and while negotiations for the settlements of the dispute of Indus as an international river were going on, development of interstate dispute in India started simultaneously in anticipation of receiving a share from the Indus Basin waters. The state governments of Punjab (composite), united Pepsu, Jammu and Kashmir and Rajasthan accordingly prepared a plan after due discussion in the inter-state Ministerial Conference held at New Delhi on January 29, 1955 whereunder 15.85 million acre feet(MAF) of the waters of Ravi and Beas were allocated in such a way that Punjab got 5.90 MAF, Pepsu 1.30 MAF, Rajasthan 8.00 MAF and Jammu and Kashmir 0.65 MAF.\textsuperscript{12} These decisions, originally recorded as the minute of the said inter-state Ministerial Conference on being duly confirmed by the concerned parties assumed the status of an agreement.

After partition of Punjab by the Punjab Reorganization Act, 1966 into Punjab and Haryana a dispute arose between the two

\textsuperscript{11} Supra Note 7, PP 133-164.
\textsuperscript{12} Agreement on Development of Inter-state and International Rivers, Government of India. Ministry of Agriculture and Irrigation, Central Water Commission, New Delhi, 1979, P31.
states as to their respective shares in the water allocated to the composite state of Punjab. Whereas Haryana claimed 4.8 MAF out of the total quantity of water of 7.2 MAF on the basis of principle of equitable distribution, Punjab wanted the entire quantity of water on three grounds: (1) Haryana is not a riparian state in respect of Ravi and Beas rivers nor does any part of Haryana fall within the basin of either of the two rivers; (ii) the headworks of canals for distribution of waters of these rivers are all located in reorganized Punjab; and (iii) Punjab planned an irrigation intensity of 200 percent to utilize the said waters.\textsuperscript{13}

In a meeting called by the Government of India on September 19, 1968, a decision was taken to allocate, pending final settlement, Ravi-Beas waters on adhoc basis, to Punjab and Haryana in the ratio of 65:35. Since the dispute could not be settled by agreement within two years as stipulated by the Punjab Reorganization Act, Haryana approached the central government on October 21, 1969, for a decision under section 78 of the Punjab Reorganization Act, 1966. By a notification dated April 24, 1970 a committee of independent experts was appointed by the Government of India. This committee submitted its report in February 1971 and recommended 3.70 MAF water on Haryana. When this report was still under consideration, D. P. Dhar, Deputy Chairman, Planning Commission was asked to examine the

question. By his note of 24 April 1976, he recommended 3.74 MAF water for Haryana, 3.26 MAF for Punjab and retained 0.20 MAF for Delhi. Haryana, however, laid claims to 6.90 MAF on the basis of its underdeveloped irrigation potential. The stalemate continued and then the matter was referred to Y.K. Murthy, Chairman Central Water and Power Commission, who while introducing the concept of ‘Divisible pool’, concluded that only 4.4 MAF water was available for division. Out of that he allotted 3.09 MAF to Haryana (inclusive of 0.03 MAF meant for Delhi). The concept of ‘Divisible pool’ permitted only that water to be calculated for distribution, which was transferred from Ravi to Beas, at Madhopur. This report was submitted in May 1979. Haryana rejected it. Punjab also contended that Haryana was entitled to only 0.9 MAF of water.

As the dispute remained unresolved, Government of India by notification dated March 20, 1976 determined the dispute as required by section 78 of the Punjab Reorganization Act, 1966 and allotted 3.5 MAF to each of the two states and the remaining 0.20 MAF to Delhi. In order to enable Haryana to utilize its full share a proposal for construction of Sutlej Yamuna Link (SYL) canal was mooted. Punjab being aggrieved on the said allocation filed a suit in the Supreme Court challenging the decision of the Government of India. Haryana approached the Supreme Court to compel Punjab to implement the decision.
During the pending of such suits an agreement was entered by the Chief Ministers of three states of Punjab, Haryana and Rajasthan on December 31, 1981 which was also countersigned by the Prime Minister of India. Under this agreement out of redetermined surplus water of Ravi-Beas at 17.17 MAF on the basis of the revised flow series 1921-1960, 4.22 MAF was allocated to Punjab, 3.5 MAF to Haryana and 8.60 MAF to Rajasthan. Punjab was required to complete SYL canal in its territory within two years, i.e., by December 31, 1983. It was also agreed that until such time as Rajasthan was in a position to use its full share from the surplus Ravi-Beas waters its utilized share may be used by Punjab. After signing this agreement the parties unconditionally withdrew their suits pending in the Supreme Court. On April 23, 1982 Punjab issued a ‘white paper’ hailing the agreement of 1981.

Afterwords due to political change of the ruling party on November 5, 1985 the Punjab Legislative Assembly passed a resolution repudiating the said agreement of 1981 and also declaring the white paper issued by the Punjab Government on April 23, 1982, as redundant and irrelevant.  

Subsequently, in order to resolve the complicated Punjab crisis an accord called the ‘Punjab settlement’ was signed at New Delhi between the Prime Minister of India and Sant Harchand Singh Langowal, president of the Shiromani Akali Dal, on July 10-11.

14 Ibid. 30-31
24, 1985. One of the issues of such Punjab crisis was the use and distribution of water of Ravi-Beas system. Paragraph 9 of the accord provides the following provision for the sharing of river waters.

9.1. The farmers of Punjab, Haryana and Rajashtan will continue to get water not less than what they are using from the Ravi-Beas system as on 1-7-1985. Waters used for consumptive purposes will also remain unaffected quantum of usage claimed shall be verified by the Tribunal referred to in para 9.2 below.

9.2. The claim of Punjab and Haryana regarding the shares in their remaining waters will be referred for adjudication to a tribunal to be presided over by a Supreme Court Judge. The decision of this tribunal will be rendered within six months and would be binding on both parties. All legal and constitutional steps in this respect to be taken expeditiously:

9.3. The construction of the SYL canal shall continue. The canal shall be completed by 15th August, 1986.15

15 Ibid. 1
In pursuance of the above mentioned ‘Punjab settlement’, the President of India promulgated the Ravi and Beas Waters Tribunal Ordinance, 1986 on January 24, 1986 to provide for the constitution of a tribunal for the verification of the quantum of usage of water claimed by the farmers of Punjab, Haryana and Rajasthan from the Ravi-Beas system as on the 1st day of July, 1985, and the waters used for consumptive purposes and for the adjudication of the claim of Punjab and Harayana regarding the shares in their remaining waters. By virtue of section 3 of the said ordinance the Government of India, by notification dated 25 January 1986 setup the Ravi and Beas Waters Tribunal to be presided over by Shri Justice V. Balakrishna Eradi, a sitting judge of the Supreme Court. Subsequently, a bill was introduced in the Lok Sabha on March 24, 1986 to replace the above mentioned ordinance.

However, it was felt that the desired objective could be better achieved by the constitution of a tribunal in the ordinary course, under the Inter state water disputes Act, 1956. But under this Act a tribunal could be constituted on receipt of a complaint from either party and not suo motu by the Central Government.
This situation necessitated the amendment of the said Act of 1956 and finally section 14, a new section was added in the Interstate Water Disputes Act, in the year of 1986. As a consequence of this amendment, the Ordinance was repealed.

The amendment of 1986, under section 14(3) authorized the central government to constitute a tribunal to be known as the Ravi and Beas waters Tribunal for the verification and adjudication of the matters referred to in paragraph 9.1 and 9.2, respectively, of the Punjab settlement. By notification no.s.o.169(E), dated April 2, 1986 the central government in exercise of the powers conferred by sub-section (3) of new section 14 of the 1956 Act constituted the Rabi and Beas waters Tribunal and referred the following two matters for verification and adjudication by the aforesaid tribunal.

“(1) The farmers of the Punjab, Haryana and Rajasthan will continue to get waters not less than what they were using from the Rabi-Beas system as on 1-7-1985. Waters used for consumptive purposes will also remain unaffected. Quantum of usage claimed shall be verified by the Tribunal.

2. The claim of Punjab and Haryana regarding the shares in their remaining waters will be adjudicated by the Tribunal.”

Initially the Tribunal was expected to submit its report within a period of six months from April 2, 1986, the date of

16 Ibid. 5
reference. The period for submission of the report was, however, extended to facilitate the completion of the work of the Tribunal. It may be mentioned here that the contents of item (1) of the reference are exactly the same as in paragraph 9.1 of the ‘Punjab Settlement’ except that in the reference, the expression ‘were using’ is employed whereas in paragraph 9.1 of the settlement, the expression used is ‘are using’. This variation is worth mentioning because certain submissions were made in the course of the hearing based on the variation.\textsuperscript{17} The Tribunal gave the award in the form of its final conclusions on January 30, 1987, under section 5(2) of the ISWD Act, 1956. The Eradi Tribunal award determined the quantum of water used by the farmers and other consumptive user of the three party states as on 1\textsuperscript{st} July, 1985 in the following manner:-

\textsuperscript{17} Chauhan B.R., Settlement of International and Inter-state Water Disputes in India. II.I, N.M.Tripathi Pvt. Ltd., Bombay. 1992 P.286.
Punjab: 3.106 MAF (Million acre feet)

Haryana: 1.620 MAF (Million acre feet)

Rajasthan: 4.985 MAF (Million acre feet)

The tribunal adjudicating the claims of Punjab and Haryana regarding the shares in their remaining waters decided and allocated 5.00 MAF to Punjab and 3.83 to Haryana and directed that in the event of fluctuation in the availability of water in the Ravi-Beas system in any particular year, the shares of the aforesaid two states shall be increased or decreased pro-rata on the above basis. The award also held that the shares of Rajasthan in the surplus waters fixed at 8.60 MAF and that of Delhi water supply fixed at 0.2 MAF under the 1981 agreement shall remain unaffected. But the demand of Delhi administration for allocation of additional supply over the existing use of 0.2 MAF is rejected as falling outside the scope of the reference to this tribunal. The tribunal even remaining confined to the terms of reference mentioned for the expeditious completion of the s.y.l. canal at an early date without loss of further time.\(^\text{18}\)

The case as it exists today is that, Punjab raised a hue and cry when the interim report of the Tribunal mentioned its share as 1\(^{st}\) July, 1985 as 3.106 MAF. It was contended that the actual utilization of water on that date by Punjab was 4.72 MAF while

\(^\text{18}\) Supra note 13 at PP-297-98.
that of Haryana was 1.62 MAF. It has thus ignored the mandatory date, July 1, 1985, fixed for determining the quantity of allocations. Earlier, the Punjab Chief Minister Beant Singh had categorically opposed the revival of the Tribunal and Mr. Prakash Singh Badal demanded for scraping of the Tribunal. The parties from Punjab on 4th November 1997 held a meeting and discussed the possibility of Punjab approaching the Supreme Court over the Tribunal’s alleged exceeding of its terms of reference in its report.

On the other hand Haryana was of the opinion that the Tribunal should be allowed to complete its work and the Sutlej-Yamuna Link (SYL) canal should be completed by a central agency like the Border Roads Organization. Haryana also demanded that Union Government, particularly the Prime Minister should be asked to press Punjab to fulfil its obligations under the Punjab Reorganization Act. Haryana also held that Punjab’s demand for scraping of the Eradi Tribunal was unfair unjust and illegal and contrary to the provisions of the Inter-state Water Disputes Act, 1956 since section 12 of the Act stipulated that Union Government can dissolve such a Tribunal only after it has completed its work and no further reference to it is required. Haryana is also of the view that the state has been denied it just share of water which should have become available to it in 1978.

The Eradi Tribunal held its last hearing in March 1989 and date for next hearing was 7th November, 1997 and on 4th November, 1997 the major political parties of both states reached in a consensus to allow Eradi tribunal to complete its work, i.e., submitting ‘final report’ under section 5(3) of the Inter-state Water Disputes Act, 1956.

From the preceding analysis it appears that Ravi Beas water dispute is yet to be settled and it is a kind of dispute which is related with semi appropriated river basin where there is a surplus water over and above the committed utilisation and thereof, the dispute relate to the claiming of surplus water. The analysis further reveals that the dispute is primarily based on exclusive proprietary rights in river water by the state of Punjab.

**B. The Narmada River water dispute**

Like Rabi-Beas Water Dispute, the Narmada River Water Dispute has also a colonial history. But at the outset, one thing should be kept in mind that by nature, Narmada dispute is not a kind of dispute merely related to sharing of waters of an interstate river or stream by the different states but it is also a kind of dispute which is concerned with the issues like apportionment of construction costs and benefits of a project developed jointly by more than one state; and questions of

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compensation to be given to a state which has been prejudicially affected by the implementation of a project by another state. Another most important feature of the dispute is that in it people's voice has been raised for the first time and this has challenged the unbridled power of the state to make decisions on their behalf ignoring them and thereby challenging the idea that construction of big dams constitute development.21

The Narmada is the fifth largest river in India. It rises in the Amarkantak Plateau at the north eastern apex of the Stapura range in Madhya Pradesh at an altitude over 3,400ft. The total length of the river from the head to its out fall into the sea is 1,312km. The first 1077km are in Madhya Pradesh. In the next length of 35km, the river forms the boundary between the states of Madhya Pradesh and Maharashtra. Again, in the next length of 39km, it forms the boundary between Maharashtra and Gujarat. The last length of 161km lies in Gujarat. The total catchment area of the river is distributed among the three states as follows:

Narmada basin receives a reasonably high rainfall. Average annual rainfall is highest in the upper reaches. The rainfall decreases in the middle lower plain, but in the lower most reaches it further increases in the Gujarat plains on account of the proximity to the sea. Narmada has a good system of drainage and consequently together with its tributaries, it drains a large quantity of water which practically falls waste in the Arabian sea. In fact Narmada brings water almost equal to Sutlej and Beas combined and the average annual flow at Gardeshwar, the lower most discharge site, is 38,670 million cubic meters. The river though it holds great potentialities for development of irrigation and generation of hydro-electric power in the regions which it traverses is the least utilized river in India. The great volume of water it brings is wasted into the sea.

At the outset of the history of the dispute, it is to be seen that in 1946, the then Government of Central Provinces and Berar and Government of Bombay requested the Central Waterways, Irrigation and Navigation commission (CWINC) to conduct study and investigation on the Narmada river system for flood control,
irrigation power and extension of navigation. The investigation conducted by CWINC proposed seven projects on the Narmada. In 1948, the Central Ministry of Works, Mines and Power appointed an adhoc committee under CWINC chairman for scrutiny of survey estimates and to recommend priorities of the seven proposed projects.

This committee recommended investigations of four projects to begin with, viz Bargi Project, Tawa Project, Punasa Project and Broach Project. The Government of India in 1949 sanctioned the recommendations of the adhoc committee.

Subsequently, in 1955 the Central Waterways Irrigation and Navigation commission was renamed as Central Water and Power Commission (CWPC) and carried out a study of the hydro-electric potential of the Narmada Basin and pointed out the possibility to generate power at the sixteen sites.

Without much progress a meeting was held on September 24, 1957 at New Delhi with representatives of Madhya Pradesh and the then Bombay state to consider the question of comprehensive development of Narmada valley. In the meeting it was decided that detailed investigations should be carried out by the CWPC at three intermediate sites between Punasa and Broach, namely at Barwaha, Harinphal and Keli and that the cost of such investigations should be shared equally by Madhya Pradesh and then Bombay state.
In 1956, the then states of Saurashtra and Kutch were merged in the then state of Bombay. During the course of time prospects of Navagam Dam were also mooted. In the meantime by virtue of the Bombay Reorganization Act, 1960, Bombay state got bifurcated into the states a Maharashtra and Gujarat on May 1, 1960, and Navagam Dam site fell within the new state of Gujarat.

Afterwards, in November 1963 through Bhopal Agreement under the auspices of the Union Minister of irrigation and power the Chief Ministers of Madhya pradesh and Gujarat agreed upon to built Navagam Dam, Punasa Dam and Bargi Dam for mutual benefit i.e., to generate power, irrigation etc and also a year after that in September 5, 1964, Narmada Water Resources Development Committee was constituted with shri A. N. Khosla, as its chairman for comprehensive development of the Narmada Basin in future.

But later, Madhya pradesh rejected the Bhopal agreement and issue became complicated and controversial. The Union Minister for irrigation and power once again took initiative to reserve to issue arranging a meeting of the chief Minister of four states, namely Madhya pradesh, Gujarat, Maharashtra and Rajashtan which was held on August 22, 1966 at New Delhi. At this meeting it was resolved that the Chief Ministers of Madhya Pradesh and Gujarat should meet as early as possible to settle the dispute amicably. Consequently the two Chief Ministers held

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discussion at Pachmari on 23rd May 1967 and New Delhi on 22nd June 1967 but without any result. Later, on 18th December, 1967, a meeting of the Chief Ministers of the above named four states and the Union Minister of Irrigation and Power was held at New Delhi but this meeting also remained fruitless.

In this situation the Government of Gujarat submitted a complaint to the Government of India on July 6, 1968 for appointment of a tribunal under the Inter-state Water Disputes Act, 1956 and in pursuance of that, under section 4 of the Act, the Government of India constituted the Narmada Water Disputes Tribunal for adjudication of the dispute about Narmada waters on 6th October, 1969. On the same date Government of India itself and on October 16, 1969, the Government of India on behalf of Rajasthan made references under section 5(1) of the Inter-state Water Disputes Act, 1956.24

Main differences and issues revolving round the Narmada water dispute can be broadly divided into two groups. First, differences and issues relating to the distribution of water, share of costs and benefits, fixation of dam height and construction of dams etc and Second, differences and issues relating to the justification of the Central Government to constitute a water dispute tribunal according to the definition of “Water dispute” within the meaning of section 2(c) read with section 3 of Inter-state Water Disputes Act,

1956, and reference made by Rajasthan to this Tribunal without being a co-riparian state etc.

Narmada Water Disputes Tribunal itself after hearing and examining the statements of case and the respective rejoinders to each other's statement by the concerned states parties to the dispute, at first framed 24 issues on January, 1971 and subsequently amended and modified the issues on April 26, 1971. The issues as finally framed by the Tribunal are as follows:

"1. Is the action of Central Government constituting this Tribunal by the Notification No. S.O.4054 dated 06. 10. 1969 or in making a reference of complaint of Gujarat by Notification No.12/6/69-WD dated the 06.10.1969 under the Inter-state Water Disputes Act ultra vires for the alleged reasons:

(a) that there was no "water dispute" within the meaning of section 2(c) read with section 3 of the Act and / or

(b) that the Central Government had no material for forming the opinion that the water dispute "could not be settled by negotiations" within the meaning of section 4 of the Act?

IA. Has this Tribunal jurisdiction to entertain or decide the question as to whether the action of the Central Government in constituting this Tribunal under Notification No.s.o.4054 dated 06-10-1969 and in referring the complaints of Gujarat and Rajasthan by Notification No.12/6/69-WD dated 16th October, 1969, and No
10/1/69 WD dated 16th October, 1969, ultra vires of the Inter-state Water Disputes Act, 1956?

2. Is the Notification of the Central Government no. 10/1/69 WD dated 16-10-1969 in referring the complaint of Rajasthan to this Tribunal for adjudication under section 5 of the Act ultra vires for the reasons:

(a) that the complaint of Rajasthan is not a matter connected with or relevant to the water dispute between Madhya Pradesh, Maharashtra and Gujarat already referred to the Tribunal by the Central Government by its previous Notification dated 06.10.1969 and

(b) that no part of the territory of Rajasthan is located within the Narmada basin or its valley?

3. Is the state of Rajasthan not entitled to any portion of the waters of the Narmada river on the ground that the state of Rajasthan is not a co-riparian state or that no portion of its territory is situated in the basin of the river Narmada?

4. Has the state of Madhya Pradesh no right to execute and complete the projects for hydro-electric development at Maheshwar I and II, Harinphal and Jalsindhi? Do any or all these projects prejudicially affect the interest of the Gujarat state or its inhabitants?
5. Is Maharashtra estopped and bound by the representation of the former Bombay state in its letter dated 16.01.1959 to CWPC dropping the investigation regarding the power project at Keli Dam site?

6. Is Gujarat entitled to construct:

(a) a high dam with FRL 530/MWL 540 thereabout or less FRL/MWL at Navagam across the Narmada river; and

(b) a canal with FSL 300 or thereabout or less at its offtake adequate discharge carrying capacity from the Navagam Dam?

7. What is the utilisable quantum of waters of Narmada at Navagam dam site on the basis of 75% or other dependability and how should this quantum be apportioned among the states of Gujarat, Maharashtra, Madhya Pradesh and Rajasthan?

(a) On what basis should the available waters be determined?

(b) How and on what basis should equitable apportionment of the available waters of Narmada be made between different states? What should be the allocation of each state?

(c) Should diversion of waters outside the Narmada drainage basin be permitted? If so, to what extent and subject to what safe guards for the concerned states?

(d) Should any preference or priority be given to irrigation over production of power?
(e) Has any state any alternative means of satisfying its needs? If so, what is the effect?

(f) What are the ‘existing uses’ or appropriation of Narmada waters by each party state and to what extent should they be recognized and protected?

8. Is Rajasthan entitled to allocation of sufficient quantity of water to irrigate 7.5 lakh acres or less or culturable command area with minimum intensity of 110% or less through a direct canal from Navagam? If not, how much?

9. What directions, if any should be given for the equitable apportionment of the waters including excess waters of Narmada river and of its basin?

9A. What directions, if any are required to be given regarding the sharing of distress among the concerned states in the event of the waters of the Narmada falling short of the allocated quantum?

10. Is Gujarat entitled to any injunction restraining MadhyaPradesh from constructing the proposed dams at Jalsindhi, Harinphal and Maheswar I and II?

11. Should a declaration be given that Maharashtra is not entitled to implement the Jalsindhi Agreement or join in the construction of the proposed dam at Jalsindhi?
12. Is Gujarat entitled to a declaration that it may use 23.49 million acre feet (inclusive of evaporation losses at Navagam Dam) or less of Narmada waters every year?

13. Should any direction be given:

(a) for releases of adequate water by Madhya Pradesh below Narmada Sagar for the setting up and operation of Navagam Dam FRL 530/MWL 540 or thereabouts or less FRL/MWL;

(b) For specification of FRL and MWL of the storage at Navagam Dam and the FSL of Navagam canal so as not to prejudicially affect the interests of Madhya Pradesh, Maharashtra or the other concerned states;

(c) For releases by the state of Madhya Pradesh below Narmada Sagar for the benefit of the states of Gujarat and Maharashtra;

(d) For the releases by the state of Madhya Pradesh below Narmada Sagar for the benefits of the state of Rajasthan.

14. What machinery, if any, should be setup to make available and regulate the allocation of waters to the states concerned or otherwise to implement the decision of the Tribunal?

15. Should the apportionment of the waters of Narmada be made amongst the concerned states so as to be binding on them for all times or whether any and if so, what period should be fixed for such apportionment shall remain binding?
16. What directions, if any, are required to be given for timely releases of the Narmada waters from the upstream reservoirs to meet effectively the requirements at and from Navagam on the basis of the allocation of waters made by the Tribunal?

17. Whether the costs and benefits of the Navagam project of Gujarat are required to be shared amongst the concerned states. If so, in what manner and on what terms and conditions? If not, whether Gujarat is liable to pay any, and if so, what compensation to Maharashtra and/or Madhya Pradesh for loss of power?

18. Whether the Navagam Project is liable to pay any compensation to any upstream projects or projects in consideration of receiving regulated releases of the Narmada waters therefrom? If so, how much and on what terms and conditions?

19(i) Whether the proposed execution of the Navagam Project with FRL 530 or thereabout or less involving consequent submergence of a portion of the territories of Maharashtra and/or Madhya Pradesh can form the subject matter of a “water dispute” within the meaning of section 2(c) of the Inter-State Water Disputes, Act (Act 33 of 1956).

19(ii) If the answer to 19(i) is in affirmative, whether the Tribunal has jurisdiction:

(a) to give appropriate directions to Madhya Pradesh and/or Maharashtra to take steps by way of a acquisition or otherwise
for making the submerged land available to Gujarat in order to enable it to execute the Navagam project with FRL 530 or thereabout or less;

(b) to give consequent directions to Gujarat or other party state regarding payment of compensation to Maharashtra and/or Madhya Pradesh and/or share in the beneficial uses of Navagam Dam; and

(c) for rehabilitation of displaced persons.

20. Whether Gujarat is entitled to the declarations and injunctions sought in sub-paragraphs (xi), (xii), (xiii), (xiv), (xv), and (xvi) of paragraph 87.1 of its statement of the case?

21. To what reliefs and directions, if any, are the parties entitled?

22. How the costs of the present proceedings and costs incidental thereto to be apportioned among the party states?"

The Narmada Water Disputes Tribunal delivered its judgement on February 23, 1972. But at first, it proceeded to resolve the disputed question of law related with issues 1(a), 1(b), 1(A), 2, 3 and 19 framed by the Tribunal itself after hearing of the parties.

On hearing all the parties and after applying the principle of order 14, rule 2 of the Civil Procedure Code and depending upon the decision of the Bombay High Court in J. Sowkabai
Pandharinath V.Tukojirao Holkar, the Tribunal decided by its order dated April 26, 1971 that issues 1(a), 1(b), 1(A), 2, 3 and 19 should be tried as preliminary issues of law. Tribunal gave its argument by saying that "it is true that the act (ISWD Act, 1956) has not expressly empowered this tribunal to decide preliminary issues separately but there is nothing in the scheme of language of the Act which precludes the Tribunal from applying the principle underlying Order 14 Rule 2 of Civil Procedure Code".

The Tribunal subsequently delivered its judgement on February 23, 1972 and held in the first place that the Notification of Central Government No. 10/1/69-WD dated 16th October, 1969, referring the matters raised by Rajasthan by its complaint was ultra vires of the 1956 Act. The Tribunal further held that the action of the Central Government constituting the Tribunal by its Notification No. S.D. 4054 dated 6th October, 1969, and making a reference of the water dispute regarding the Inter-state river Narmada and the river valley there of emerging from the complaint of Gujarat by Notification No. 12/1/69-WD dated 6th October, 1969 was not ultra vires of the Act and that the Tribunal had jurisdiction to decide the dispute referred to it at the instance of Gujarat. With

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25 J Sawkabai Pandharinath v Tukojirao Holkar. AIR 1932 Bombay, 128
regard to the issues 19(i) and 19(ii), the Tribunal further held that the proposed construction of the Navagam project in solving consequent submergence of portions of the territories of Maharashtra and Madhya-Pradesh can form the subject matter of a "water dispute" within the meaning of section 2(c) of the 1956 act. The Tribunal also found that it had jurisdiction to give appropriate direction to Madhya-Pradesh and Maharashtra to take steps by way of acquisition or otherwise for making submerged land available to Gujarat in order to enable it to execute the Navagam Project and to give consequent directions to Gujarat and other party states regarding payment of compensation to Maharashtra and Madhya-Pradesh, for giving them a share in the beneficial use of Navagam dam, and for rehabilitation of displaced persons.27

In the meantime MadhyaPradesh and Rajasthan preferred appeals to the Supreme Court by special leave and also obtained a stay of the proceedings of the Tribunal to a limited extent. The orders of the Supreme Court granting special leave to Rajasthan and Madhya Pradesh are dated May 1, 1972 and June 6, 1972, respectively. The Supreme Court stayed the proceeding of the Tribunal but ordered that the discovery, inspection and miscellaneous proceedings before the Tribunal may go on. It is also to be noted that the Supreme Court also permitted the state of Rajasthan to participate in these inter-locutory proceedings.28

27 Ibid. P3
28 Supra note 24.P5
With this development, at this stage another important incidence took place. The then Chief Ministers of Madhya Pradesh, Maharashtra and Rajasthan and the Advisor to the Government of Gujarat, reached in an agreement on July 12, 1974, with following terms and conditions:

(i). The four states agreed to delete issues Nos. 4, 5, 7(a), 7(c), 7(d), 7(e), 7(f), 8, 10, 11, 12 and 20 and modify issues Nos. 6, 7(b), 13 and 17 framed by the Tribunal on January 28, 1971.

(ii). Both Madhya Pradesh and Rajasthan agreed to withdraw their proceedings filed before the Supreme Court for the limited purpose of effectuating the terms of this Agreement.

(iii). Rajasthan was made a party to the further proceedings before the Tribunal.

Accordingly in the light of this agreement, Tribunal deleted the issues as requested by the parties of the agreement and modified issues Nos. 6, 7(b), 13 and 17 in the following manners:

6. What shall be the heights of the dam at Navagam across the Narmada water and what should be the level of the canal at its offtake with adequate discharge carrying capacity from the Navagam dam?

7(b). How and on what basis should equitable apportionment of the 27.25 MAF of water be made between the
states of Madhya Pradesh and Gujarat? What should be the allocation to either state?

13. Should any direction be given:

(a). For releases of adequate water by Madhya Pradesh below Narmada Sagar for the setting up and operation of Navagam dam;

(b). for specification of FRL and MWL of the storage at Navagam dam and FSL of Navagam canal so as not to prejudicially affect the interests of Madhya Pradesh, Maharashtra or the other concerned states;

(c). for release by the state of Madhya Pradesh below Narmada Sagar for the benefits of the states of Gujarat and Maharashtra;

(d). for the releases by the state of Madhya Pradesh below Narmada Sagar for the benefits of the state of Rajasthan.

17. Whether the cost and benefits of the Navagam project of Gujarat are required to be shared amongst the concerned states. If so, in what manner and on what terms and conditions? If not, whether Gujarat is liable to pay any, and if so, what compensation to Maharashtra and/or Madhya Pradesh for loss of power? Whether Maharashtra and/or Madhya Pradesh are entitled to any share of power because
of their proposed projects, namely, Jalsindhi, Harinphal and Maheswar.29

With Issues Nos 1,1-a, 2 and 3 having been disposed of by the Tribunal as preliminary issues and also by the order of the Supreme Court, and with the deletion of a number of issues as suggested by the four states in their agreement of July 12, 1974, the Tribunal was left with issues No 6,7(b), 9,9A, 13-19,21 and 22 to decide and these were disposed of in the following manner by the Tribunal:

Regarding issue No 6 read with issue no 13(b) the Tribunal directed that “in view of allocation of 10 MAF of water to Gujarat the height of the Navagam dam would be fixed at FRL (Full Reservoir Level) 458 and the MWL (MaximumWater Level) 463”30.

Resolving issue No 7(b) the Tribunal in its Final Order in clause III provided that the Madhya Pradesh Was entitled to 17.25

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29 Id at 8  
30 Supra note 24, vol-IV,64
million acre feet whereas Gujarat had been allocated 10 million acre feet out of the utilizable quantum of water of 28 million acre feet.

With respect to issue No 9, the Tribunal directed in clause IV (I) of its Final order that “the utilizable flow of Narmada in excess of 28 MAF in any water year is apportioned in the ratio of Madhya Pradesh – 69; Gujarat 40; Maharashtra 1; and Rajasthan 2”. Regarding sharing of distress (Issue 9A) the direction of the Tribunal as contained in clause IV (ii) of its Final order, were, that “the shortage (i.e. short of 28 MAF) shall be shared between the concerned states” in the same ratio as the excess.

Relating issue No 13 the Tribunal directed in clause IX of its final order that regulated releases were to be made in Madhya Pradesh for the requirements of Sardar Sarvar project. 31

With reference to issue No 14 pertaining to setting up of the machinery for making available and regulation of water to the concerned states, the Tribunal directed in clause XIV of its final order that “detailed Rules and Regulation and water accounting shall be framed by the Narmada Control Authority.”

Disposing the issue No 15 regarding duration of time for which the intended apportionment of water was to remain binding, the Tribunal laid down in clause V of its Final order, to be 45

31 Supra note 23, Vol-I.
(Forty five) years to be calculated from the date of coming into operation of the order.

The answer to issue No 16 regarding release of the Narmada water from the upstream reservoirs is also provided in the direction of the Tribunal in clause IX of its final order and the pertinent paras of the Report of the Tribunal which led to the conclusions contained in the said clause.

The Tribunal in course of its disposal of issue No 17, pertaining to sharing of costs and benefits laid down the norms for sharing of ‘costs and benefits’ in clause VIII, for “allocation of costs of Navagram project between irrigation and power” in clause XII and for “allocation or irrigation component of costs on Navagram project between Gujarat and Rajasthan” in clause XIII, respectively of its final order and the corresponding clauses and sub-classes of its earlier order contained in chapter XX (vol II) of its Report.

The Tribunal regarding issue no 18, directed in clause X of its Final order that payment are to be made by Gujarat to Madhya Pradesh for regulated releases. The norms for the same are also laid down in the said clause X and other details are provided in the correlated provisions of the Report.

Handling issue No 19 regarding submergence of land, acquisition of the said land and rehabilitation of displaced persons, the Tribunal gave specific directions as contained in clause XI of
its final order and corresponding clause XI of chapter XX (vol. II) of the Report.

The answer to issue no 21 pertaining to relief to the parties is found in the provisions of the totality of the directions of the Tribunal tackling specific issues as such.

By way of disposal of issue No 22 the Tribunal directed in clause XV of its final order that the concerned four states shall bear their own costs of proceedings before the Tribunal and that the cost and expenditure of the Tribunal shall be borne and paid by the concerned four states in equal share.

Present Scenario of the Dispute

Narmada Water Dispute Tribunal (NWDT) performed a historical role for resolving inter state river water dispute of Narmada at least two to three decades ago. In the meantime, the dispute had assumed a new dimension by an interim order of the Supreme Court in the Narmada case, more precisely, in the interlocutory application made by the Union and Gujarat Government in the writ petition filed by the Narmada Bachao Andolan.32

The Supreme court had been hearing the above petition for two years. Since May 5, 1995, an order of the court was in force which restricted the government to maintain effective height of the

32 Supra note 21. P-693.
partly complete Sardar Saravor Dam at 80.3 metres and not to allow further construction of the dam. The court had stayed any further work on the dam - the middle spillway portions at least. The Gujarat Government, as also the centre, had made an application to the Supreme Court urging it to vacate this stay. Hearing the matter on February 24, and then on March 3, 1997, the court finally decided that there was no need to vacate the stay and modifications of the order in force were granted.

The order of the Supreme Court generated reactions in Gujarat assembly and in the parliament. The Gujarat assembly passed a resolution pledging completion of the project. In the forum of parliament senior leaders criticizing the Supreme Court’s order on the SSP expressed fears about “parliament becoming irrelevant”. The leaders also expressed concern about the reopening of the inter-state disputes that it would land the country in great difficulty.

Now after the order of Supreme Court few important issues revolving round the Narmada Water Dispute had once again came in to the forefront. These were as follows :-

(1). Whether the Tribunal orders are supreme or that of the Parliament and Judiciary.

(2). Whether the court has re-opened the Award of the NWDT or tried to change even a comma.
(3) Whether the court is reopening a closed dispute which was never closed.

Now to make rational answer to all the issues stated above, it is necessary to go back to the history of the construction of Sardar Sarovar project (SSP) after the submission of the final order of NWDT in the year of 1978.

The Sardar Sarovar Project (SSP) is the most controversial and the largest water resources development project of the country. It was originally envisaged in 1946 and NWDT hold critical deliberation and finally put recommendation regarding its construction, height etc, and finally the project saw the light of the day in 1987.\(^{(3)}\)

The SSP is one of the “Super” dams (the other being the Indira Sagar Project in Madhya Pradesh) of the Narmada Valley Project which claims to be the largest irrigation project ever planned as a single unit any where in the would. It is now apprehended that the SSP is likely to displace 100,000 people from 248 villages in six districts of Gujrat, MadhayaPra\(\text{desh}\) and Maharashtra if it is constructed following original design of 455 feet prescribed by NWDT.

So, controversy has emerged that what should be the appropriate height of the dam. The concerned parties have put their

claim and counter claims. Madhya Pradesh has proposed to reduce the height of SSP from 455 feet to 436 on the ground that it was worked out by NWDT. Gujarat and Rajasthan would get their allocation share. It would therefore not be tantamount to disturbing the terms of award so far Gujarat and Rajasthan are concerned. The Madhya Pradesh Government also demands that the provisions of Narmada Dispute Tribunal Award, pertaining to the height of the dam, be reviewed in view of the present hydrology of the reduced flow of water in the Narmada (currently 22.5 as MAF against 27MAF adopted by the Tribunal. Madhya Pradesh also cited precedents when certain provisions of the award like the configuration of the canal head power house and the river bed power house were changed following an agreement among the participant states.34

On the other hand, Gujarat Government argues that the final order and decision under section 5 (ii) of the Interstate Water Disputes Act 1956 of the Narmada Water Disputes Tribunal makes it clear that the height of the Sardar Sarovar Dam should be fixed for full reservoir level at 455 feet and Gujarat shall take up and complete the construction of the dam accordingly. A review of the height can be possible only after December 12 in the year 2024.

Under the circumstances, Court granted above mentioned stay order. Therefore, it should be borne in mind, it is not as if the

court has re-opened the Award of the NWDT or tried to change anything. All it has done is to disallow construction on the dam beyond the current height. It may be noted that the NWDT itself provides for this in its clause XI, sub-clause IV (6)(ii) where it says, “In no event shall any areas in Madhya Pradesh and Maharashtra be submerged under the Sardar Sarovar unless all payment of compensation, expenses and costs aforesaid is made and arrangements are made for the rehabilitation of the oustees therefrom in accordance with these directions and intimated to the oustees”. Sub clause IV(2) (iv) says that the irrigable lands and house sites for rehabilitation shall be available one year in advance of submergence. Thus, the very Award which the parliament says is sacrosanct is providing for a stoppage of work on the dam in case of failure of rehabilitation programme. That such a failure has taken place is absolutely clear and obvious.

Also it is not a question of re-opening a closed dispute. As far as the people of the valley are concerned, the dispute was never closed. Indeed, they were not even involved in the ‘dispute’ that took place and was ‘resolved’ between the states of Gujarat, Madhya Pradesh, Rajasthan and Maharashtra. The most important fact is that the Narmada valley issue is one of the rare river valley disputes in India where the people have raised the dispute. And this has challenged the unbridled power of the state to make decisions on their behalf ignoring them and indeed destroying their livelihood.
By challenging the SSP, the people have not challenged the sanctity of the Tribunal or the Parliament that constituted it, but have shown that the concept where the dispute was presumed to be only between the states ignored the most fundamental issues affecting the people and that they were the most important party to the issue, but the one not consulted at all. The struggle against the SSP has also given an impression that bigger dams does not always constitute development, and hence has questioned the very basis on which most water disputes are being adjudicated today in the country. So, it is the duty of parliament, instead of taking any mechanical approach to look through into the matter that what the reasons on which the project is being challenged.

Further, even in the Tribunal award as it is today, many of the fundamental assumptions on which the award was based are now not valid. For example, the Tribunal had estimated the number of oustees families as about 7000, however, even government figures put these at 41,000 families. Likewise, the water availability in the river was estimated at 28 million acre feet. Now, it is found to be only 22.6. Thus on the basis of these grounds, there is certainly a need to re-evaluate the Tribunal award. Also, the Tribunal is a static document standing still in an era of at least two or three decades ago. Therefore, the question is, how can such a document be supreme over the Parliament, Judiciary and the People themselves who are and have to be ever responding to changing facts, situation and developments?
From foregoing discussion it is clearly established that no state agency even parliament could realise the implication of court orders. Supreme Court without taking any prejudice has given its order in open mind that Tribunal award is not sacrosanct and can never be so.

However, it is interesting to note that, hearing the writ petition which was filed by the Narmada Bacho Andolon (NBA) in the year of 1995, Supreme court’s three Judge Bench in its 18th Feb, 1999 order permitted the Gujarat Government to raise the height of Sardar Saravar dam on Narmada from 80.3 metres to 85 metres. Practically speaking, there is no logic for such surprising order of the Supreme court deviating from its earlier order on 5th May 1995, wherein the court had directed to stop the construction of the dam at a height of 80.3 metres till the petition filed by Narmada Bacho Andolon (NBA) challenging the entire project was disposed of.

Subsequently, in the wake of the Supreme Court’s 18th February order on 15th March 1999 the Madhaya Pradesh Government filed a suit in the Supreme Court seeking a direction from the Court to the Union Water Resource Ministry for setting up a new Narmada Tribunal and pleaded to grant status quo with regard to the construction of the Sardar Sarovar Project till the disposal of the suit. Meanwhile, the Supreme Court on 18th Oct. 2000 dismissed the Narmada Bachao Andolan petition and cleared the construction of SSP dam on the Narmada up to 90 meteres as per tribunal award.
From the discussion of the origin, nature and development of Narmada Water Disputes, it may be concluded that though Narmada River Basin appears as a settled river basin where rights of parties are defined under an agreement or an award of the Tribunal and the dispute relates to the interpretation, implementation and review of the agreement or award of the Tribunal but present scenario of the dispute suggests that the dispute is not yet completely settled and no longer remains confined to the parties as well as matters recognised and settled by the Tribunal.

The nature of the dispute specially its current dimension reveals that many of the fundamental assumptions upon which the award of the Tribunal was based are not valid and therefore, a demand for setting up a new Narmada Tribunal is gaining ground. It is also revealed that many substantive issues like whether big dam constitutes development, problems of oustees, environment pollution, state centric settlement of dispute overlooking micro social relationship, discrepancies in basic hydrological data have radically changed the nature of dispute suggesting the fact that the dispute is no longer confined to rich peasantry, irrigation bureaucracy and political elite.
C. The Krishna River Water Dispute

Like Narmada River Water Dispute, another equally complex river water dispute is the Krishna River Water Dispute. In this dispute there is also a controversy regarding the construction and height of a dam called Almatti. Not only that, recent development of the dispute have brought the issues of reopening of the two decades old award of the Krishna Water Disputes Tribunal in the forefront.

The Krishna river, reverentially called the 'Krishnaveni' and 'Krishanammatalli' in Andhra, rises near Mahabaleshwar of the Mahadev Range of the Western Ghats and runs through Maharashtra, Karnataka and Andhra before joining the sea, called the Bay of Bengal. The total length on the run of the river is 870 miles (1,200km), out of which 186, 300 and 358 miles are in Maharashtra, Karnataka and Andhra respectively. Maharashtra and Karnataka are the upper riparian states and Andhra is the lower or the lowest riparian state of the Krishna. Thus the Krishna river is inter state river, and consequently dispute has arisen between some of the states in the basin over the allocation of waters to their respective territories for purposes of development.

Prior to 1951, some irrigation projects existed in the Krishna and Godabari basins. Apart from irrigation works there were a

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35 Report(First) of the Krishna Water Disputes Tribunal. Vol-I. 1973 P-19
large number of tanks and wells used for irrigation in the basins of these two rivers. The supply of water to these tanks involved the diversion of waters from the Krishna river system which was in Andhra Pradesh and the present state of Karnataka. The water from these two rivers was also utilised for areas lying outside the drainage basin. Most of the irrigated areas also lay outside the river basins.

After, 1951, with the attainment of Independence, India embarked on a large scale development of water resources for irrigation and power. The states of Bombay, Hyderabad, Madras and Mysore commenced the irrigation and planning of some large projects on the river Godavari and its tributaries, several political parties also evinced interest in the development of river waters for beneficial use. It was then that the awareness arose among them that the Schemes proposed by one state should not adversely affect the existing as well as the future projects of other states. Thus the necessity for an agreement among the concerned states for the allocation of water of the rivers Krishna and Godavari was recognised.

It was at this time that the First Five year plan was proposed with an objective of planned economic development of the country. As the planning commission wanted to include some major schemes on these two rivers in the First Five year plan, the states were asked to suggest project which had been investigated and found to be viable. An inter state conference was also convened in
July 1951, to facilitate agreement among the states. The object of the conference was to discuss the utilisation of supplies in the Krishna and Godavari river basins with a view to assess the merits of the various projects suggested. Orissa, a riparian state of the Godavari, was not invited to the conference. The agreement provided for a review of allocations after twenty-five years. The states that took part in the 1951 conference were Bombay, Madras, Hyderabad, Madhya Pradesh and Mysore. Bombay, Hyderabad, Mysore and Madras were interested in the distribution of waters of the river Krishna. Bombay, Hyderabad, Madhya Pradesh and Madras were also concerned with the allocation of waters of the Godavari. The Governments of Madras, Bombay, Hyderabad and Madhya Pradesh subsequently ratified the agreement. However, the Government of Mysore did not do so.36

In 1953, the states were being reorganised on a linguistic basis. Madras was divided into Andhra and Madras. Subsequently the States Reorganisation Act of 1956 created the state of Andhra Pradesh by merger of parts of Hyderabad and Andhra. The state of Hyderabad was bifurcated and one part went to Andhra Pradesh while other parts went to Bombay (now Maharashtra) and Mysore (now Karnataka) states. The old state of Madhya Pradesh also ceased to exist as its borders had been altered and some territories were added to the new state of Madhya Pradesh. After

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the creation of the new states, Maharashtra, Karnataka and Andhra Pradesh are now the riparian states for the river Krishna. In view of the territorial changes, demands were made to recast the allocations made in 1951. However, the agreement of 1951 provided for a review of the allocation after twenty five years. In order to bring the states to an amicable solution, an inter-state conference was convened in New Delhi by the then Union Minister for Irrigation and Power in September 1960 which proved futile. The then state of Mysore (now Karnataka) and Maharashtra questioned the validity of the 1951 agreement and, together with Madhya Pradesh and Orissa, asked for a fresh consideration of the whole issue. On the other hand Andhra Pradesh objected to any alteration before the stipulated time of twenty five years, that is, before 1976 except for any modification, because of the reorganisation of states. The states could not reach any agreement on the final solution.

The Central government, therefore, on the basis of the suggestion given by inter state conference which was convened in New Delhi in September, 1960, appointed the Krishna,Godavari Commission in May, 1961. The Commission which was in direct control of Union Ministry of Irrigation and Power submitted its report in August,1962, without providing any clear solution of the problem owing to the lack of sufficient data.

Meanwhile , the Government of Andhra Pradesh requested that the dispute be transferred to a Tribunal. Finally, the Union Government referred the Krishna and Godavari dispute to two
separate Tribunals with the same personnel. On the question as to whether one or two tribunals were to be constituted there was a controversy among the states; Maharashtra and Karnataka advocated one tribunal as they felt that the dispute over both rivers were inter-linked, and Andhra Pradesh suggested two tribunals. The Government of India held the view that two separate tribunals were needed and constituted them accordingly.\(^{37}\)

Thus for the equitable sharing on the Krishna waters, inter-state water disputes among the three states, which defied a solution by negotiations was referred by the Government of India (GOI) under the Inter -state Water Disputes Act, 1956 (Act XXXIII of the 1956 Act) by their notification No S.O.1419 dated April 10, 1969 to a tribunal called ‘the Krishna Water Dispute Tribunal’, presided over by Mr. Justice R. S. Bachawat, then sitting judge of the Supreme Court.\(^{38}\)

The Tribunal made extensive and intensive investigation, inquiries under section 5(1) and (2) of the Act and submitted its report under section 5(2) in three volumes to the Government of India on December 24,1973 and this is referred to as the “First Report”.

On the “First Report” GOI and the three states sought

\(^{37}\) Supra note 9, at P-14

\(^{38}\) Supra note 35, PPI-3
various clarifications or explanations or guidance from the Tribunal within the time frame stipulated in section 5(3) of the Act. On a meticulous examination of these references the Tribunal submitted its further Report or the Final Report (vol.iv) to the GOI on May 27, 1976. Thus the Krishna Dispute Tribunal, headed by Justice Bachawat gave its award in 1976, seven years after it was set up. The Tribunal offered two schemes, such as A&B. Scheme A, which was independent of Scheme B, provided for allocation of waters and was to come into effect on the day the decision was in the Gazette. The award was published in the gazette dated May 30, 1976 as required by section 6 of the Act. On this, the Award of the Tribunal became final and binding on Maharashtra, Karnataka and Andhra Pradesh. Scheme B was left to be implemented after the agreement of the states or by parliamentary legislation.

Resolving issue like the validity of the 1951 agreement, on the basis of the documentary evidence, the Tribunal decided that there was a concluded oral agreement in 1951 regarding the allocation of Krishna waters. However, Karnataka was not a party to any agreement nor did it subsequently ratify the agreement. The other states ratified the agreement under the impression that Karnataka would also ratify it. Thus in the absence of ratification there was no valid agreement. The Tribunal arrived at this conclusion on the authority of Justice B. K. Mukherjee’s observations in Jai Narian Ram Lundia Vs Surajmall Sagarmall. 39

39 Jainarain Ram Lundia vs Surajmall (1949) F C R. 379
When parties enter into an agreement on the clear understanding that some other person should also be a party to it, obviously no perfected contract is possible as long as this other person does not join the agreement. This would be the position in law apart from any rule of equity.

Chapter VII of the “Final order” or the Award of the Tribunal and clause II therein declared that the states of Maharashtra, Karnataka and Andhra Pradesh will be free to make use of underground water within their respective state territories in the Krishna river basin. However, this declaration was not to affect the rights, if any, of the private individuals, bodies or authorities under the law for the time being in force. The Tribunal also declared that the use of underground water by any state shall not be reckoned as use of the water of river Krishna.

Clause III declared that the 75 percent dependable flow of the river Krishna up to Vijayawada is 2060 tmc and is available for distribution between the states of Maharashtra, Karnataka and Andhra Pradesh.

The Tribunal further considers that additional quantities of water as mentioned in sub clauses A(ii), A(iii), A(iv), B(ii), B(iii), B(iv), C(ii), C(iii), and C(iv) of clause V will be added to the 75 percent dependable flow of the river Krishna up to Vijayawada on account of the return flows and will be available for distribution between Maharashtra, Karnataka, and Andhra Pradesh.
Under clause iv of the “final Order”, the Tribunal allocated waters of the river Krishna for beneficial use to the three states of Maharashtra, Karnataka and Andhra Pradesh in accordance with specifications provided in clause v of the order.40

Clause V allocated the 2,060 tmc if determined in clause III to the three states, as set out therein – 560, 700 & 800 tmc ft to Maharashtra, Karnataka and Andhra Pradesh respectively.41

Clause VI elaborated the term “beneficial use” as to include any use made by any state of the waters of the river Krishna for domestic, municipal, irrigation, industrial, production of power, navigation, sericulture, wild life protection and recreation purposes.42

Clause VIII of the final order of Tribunal resolved that the non use of its share of water by a state in a particular water year did not entitle that state to make good that non use in the subsequent water year but such non-user did not in any way, operate as to reduce its duly allocated share of water for the subsequent water years nor to increase the share of water of some other state which incidentally made de facto use of that unused water share of the concerned state.43

42 Supra note 40. 51-52.
43 Ibid. 53.
Clause IX imposed restrictions on the beneficial use of the water by the three states.

Under clause X of the “Final Order” the Tribunal permitted the state of Maharashtra to divert water of Krishna river for use outside the Krishna river basin but it imposed a limit beyond which Maharashtra could not divert the said water within one water year. Under clause XIII(A) the Order even requested each state to prepare and maintain annually for each water year complete detailed and accurate records of “annual diversions outside the Krishna river basin”.

Under clause XI of the “Final Order” it was declared that the said Order will supersede all six agreements so far it related to the Krishna river system.44

Clause XIV stipulated that the award will be valid till May 31, 2000 and a review or revision of the same can be undertaken thereafter, except as provided by clause XVIII which reads thus: “Nothing contained herein shall prevent the alteration, amendment or modification of all or any of the foregoing clauses by agreement between the parties or by legislation by parliament”.45

Clause XV of the Tribunal authorised the contestant states to regulate, within their respective boundaries, the use of water, or to enjoy the benefits of the said waters within the concerned state, as

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14 Ibid. 15
15 Ibid.
it liked, provided such use or enjoyment was not inconsistent with this order of the Tribunal. 46

Finally clause XVI of the “Final Order” of the Tribunal laid down following three pertinent principles of water dispute.

(i) The use of water of the river Krishna by any person or entity of any nature whatsoever within the territories of a state shall be reckoned as use by that state. 47

(ii) The expression “Water year” shall mean the year commencing on 1st June and ending on 31st May. 48

(iii) The expression “Krishna river” includes the main stream of the Krishna river, all its tributaries and all other streams contributing water directly or indirectly to the Krishna river. 49

Present scenario of the Dispute

For appreciation of the present position of the Krishna river water dispute, at the outset a critical appraisal of Krishna water Dispute Tribunal’s award including the short history of the

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46 Ibid. 55-56
47 Ibid. clause XVI(a)
48 Ibid. clause XVI(b)
49 Ibid. clause XVI(c)
construction of Alamatti dam with its impact on the KWDT award is needed.

The Krishna water Dispute Tribunal (KWDT) headed by Justice Bachwat gave its award in 1976, seven years after it was set up. It awarded 700 tmc feet of Krishna water to Karnataka, 800 tmc ft to Andhra Pradesh and 560 tmc ft to Maharashtra from where the river originates. This was out of the 2060 tmc ft of water that was calculated as the yield at 75 percent dependability as stated earlier.

It was then thought that the award had once and for all solved the dispute involving the three states but that was not to be. The states have to utilize their allocation before the year 2000 when the award comes up for review, mainly to decide on the question of sharing the excess water available in the river (2390 tmc at 100 percent dependability) that is, according to scheme B of the KWDT, whatever excess and unused water is found in the Krishna river will be reallocated among all the states. Obviously, because of this reason to get the revised share, there is a race among the riparian states to complete on going projects on the Krishna river. Therefore the Krishna river water dispute which has got a new dimension with the controversial question of the construction of the Alamatti dam and other projects of the Krishna river is nothing but the outcome of this race.

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^Rajendra Prasad, "The Alamatti row," The Hindu, Madras 13 August, 1996, p-12
The Alamatti dam under the upper Krishna project (UKP) located in Bijapur district of Karnataka was already under construction by Karnataka when the KWDT was set up in 1969. The planning commission first gave its approval to Karnataka in 1963 for partial construction of the Alamatti dam with an investment of Rs.58.20 crores to irrigation 2.42 lakh hectares in 1963 under stage I of the Project.

The revised stage II was approved by the planning commission in April 1978 and again in September 1990, the commission approved the modified estimate for stage I. In this approval Alamatti's height was allowed to be raised to the maximum water level under stage I to 519.8 metres and a free board of 4.00 meters. In the same letter, the commission who gave Karnataka “no objection” for seeking investment for advance planning under stage II of the Alamatti dam in the spillway and power dam portion with an increase in the dam height from 523.8 to 528.25 metres. The Central Water Commission (CWC) however, maintains that sanction for non-consumptive use for power has not been given yet and now, it has became a controversial matter that whether CWC has sanctioned stage II of the project and whether it is still under the consideration of C.W.C. Now, the height of the Alamatti dam which commenced as early as in 1970 stands at 506 meters and the height is proposed to be raised to 528.256 metres by Karnataka. The state of Karnataka claims that the award of KWDT

entitles them to raise the height of the dam, while Andhra Pradesh claims that height cannot exceed 512.2 metre. This, in a nutshell is the dispute between the two states.

In this controversy, both the states have been accusing each other for the violation of the KWDT award. To justify his own side each state government has put forward a number of agreements. According to Andhra Pradesh Government, if the height of Alamatti dam goes up to 532 metres as contemplated by Karnataka now, there will be drastic cut in the inflows to Andhra Pradesh project. Andhra Pradesh has alleged that the Karnataka has plans to raise the height of the dam beyond specified limit to store additional water which may affect its share, being a lower riparian state. Andhra Pradesh also argues that Karnataka second stage construction of Alamatti dam is not at per with KWDT award. By detaining most water at the dam, Karnataka will defy flows to Andhra Pradesh in a normal year and then will have the capacity to regulate the supply as well. As a result, Andhra Pradesh government argues that when there is a review, in May, 2000 the actual utilization of river water at the time of review will have to be taken into account and if Karnataka were to utilize 225 tmc ft at Alamatti, then the Tribunal must confirm that much of use and increase Karnataka's as share of the Krishna water. Andhra Pradesh Government also contends that the increase in height will enable Karnataka to utilize up to 400 tmc ft of water as against the allocation of 173 ft for the upper Krishna project (UKP).
On the other hand, Karnataka Government contends that the construction of the dam at Alamatti was in progress when the Krishna water dispute Tribunal gave its award. The award merely said that Karnataka had proposed to “complete” the Alamatti dam in the second stage of the project, without specifying the exact “full height” approved. Karnataka Government interpretes this sentence to mean the full height of the project as it had proposed, for the first time in November, 1993, by revising the design to make it a multipurpose project to generate power. This envisaged a “final” full reservoir level of 524.256 metres above mean sea level. She also argues that because of this reason Planning Commission cleared the Alamatti dam with a height of 528 metres. In reply to the charge of violation of the KWDT award Karnataka’s arguments is that if she violets KWDT award then Andhra Pradesh is equally violating KWDT’s award by unauthorized increasing the height of Jurala dam by 0.62 metre and with the help of Telugu Ganga project, Andhra Pradesh utilizing an additional amount of 300 tmc ft of water to irrigate 5.75 lakh acres in the parched Raya luseema region.52

The extent of reality of this sort of allegation and counter allegation is quite unknown. But from this discourse one thing is clear that is, no one is an innocent bystander as far as exploitation of Krishna water is concerned. They have all violated the KWDT award in order to acquire the share of excess water after review of

52 B.S. Nagraj, “River deep, dam high”, The Indian Express, Mumbai, August 8, 1996, P-7
the award by the year 2000. Maharashtra, too, does not have an unblemished record. According to KWDT’s award, it should divert only 78 tmc per annum from the Krishna basin to the Koyna reservoir but it is diverting over 100 tmc. It has also taken up a major programme for 42 projects for which it has already raised Rs 3,600 crore by issuing public bonds.\(^{53}\)

Because of these reasons critic hold the opinion that defect itself lies in the KWDT award. They contend that the concept of flood water or “Surplus water” utilization remains vague per KWDT’s award, and every riparian state has been exploiting it to its own advantage. KWDT specified allotment but did not provide for pro-rata sharing during a lean period. As a result, a situation has cropped up under which even during a drought the first riparian state, Maharashtra has the scope to fill all its reservoirs up to its allotment (530 tmc ft) using the first flood, and only then allow release to Karnataka which, in then does the same. There is no authority as of now not only to check what state stored how much as against its entitlement but also to force releases once a particular state attains its allotment. It is proved that the scheme “B” of the award moots formation of a Krishna valley Authority to fill the gap but Maharashtra and Andhra pradesh have rejected it.\(^ {54}\)

Under these circumstances when the shimmering hostility...
reached its peak point creating a crisis in the existence of the then United Front Government at centre in August 1996, due to threat of withdrawal of support of Mr. Chandra Babu Naidu’s Telegu Desam Party from central ministry, the central government under the leadership of prime minister Mr.H.D.Deve.Gowda, who was already in dock over the Alamatti issue by allegation of being partial to Karnataka, and its steering committee formed a committee of four chief Ministers of West Bengal, Bihar, Assam, and Tamilnadu presided over by the first of them to amicably resolve the dispute between Andhra pradesh and Karnataka. The Four Chief Ministers constituted an expert Technical Committee (ETC) with the representative of the planning commission and the central water commission to study in depth the technical problem and report to them. The bountiful monsoon during the year in the Karnataka Basin prevented Karnataka from proceeding with construction of the dam. Karnataka says it will go ahead and complete the dam to the height of 528.256 meters when the weather permits.

Meanwhile the situation turned delicate and twisted, when Mr.R.Krishnaiah, president, Andhra Pradesh Backward Classes Welfare Association, Hyderabad, moved the High Court of Andhra Pradesh under Article 226 of the constitution in W.P. no 12756 to 12759 of 1996 to restrain Karnataka from proceeding with the construction of the Alamatti dam over and above 512.2 metres.
Petition was in nature of public Internet Petition and was filed even as the four Chief Ministers were discussing the issue.

Hearing the petition, the Andhra Pradesh court initially issued an injunction against construction activities at the dam site in Karnataka and later amended it to allow only the stage I work up to 509 meters. Though it rejected the plan of petitioner to implead the Prime Minister, the Karnataka Chief Minister and Irrigation Minister, the court said the centre was free to initiate a dialogue between both the states to end the stalemate and accordingly Central Government convened a meeting of the two Chief Ministers in Delhi in which CWC chairman defended that it had not violated the Bachwat award. But in counter affidavit filed in A.P. High Court by the Karnataka Government complicated matters. It revealed the CWC had sanctioned stage II as early as 4th July, 1996, while a communication by the then Union water Resources Minister, Janesshwer Mishra, dated 11July addressed to Chandra Babu Naidu, said that stage II of the Alamatti project was still under examination of the C.W.C. (Central Water Commission).

The crisis further deepend when Karnataka Major Irrigation Minister K.N. Nage Gowda gave a statement that the Centre had sanctioned Rs.200 crore for the Alamatti project. Naidu reacted sharply by accusing Prime Minister of “conniving with Karnataka”

55 Supra note 53. P.22
and threatened the TDP would withdraw from the UF Government at the Centre.

At this juncture, Chief Minister’s Committee tried to move on and when the Expert Committee appointed by the Chief Minister’s Committee reached Bangalore on their way to Alamatti; the Karnataka Government appraised them that the committee appointed by UF steering committee apparently had no locus standi and representative from the Planning Commission and the CWC could not participate in it. Karnataka Government also said the matter was already “subjudice” and any parallel move invite Judicial Stricture.

In the meantime, a direction from the Andhra Pradesh High Court on 16 August, 1996, however, put to rest any confusion regarding the locus standi of the Expert Committee. But on the other hand, due to the refusal on the part of Karnataka Government to let the expert team visit the site, to disclose detail of upper Krishna project, and subsequent dissolution of UF Government, the functioning of the Expert Committee has become infructuous. Now the Andhra Pradesh Government is in a fix because the Karnataka is determined to raise the height of the Alamatti dam and it is also reported that Karnataka has constructed Chikkapalasalgi Barrage between Alamatti and Ippargi in Bijapur district to help store 6 tmc of water for irrigation purpose. According to legal experts, it is a gross violation of Bachawat
Tribunal’s award Because Tribunal permitted only storage and not irrigation under the Alamatti project.\textsuperscript{56}

Though the dispute is still unresolved and Karnataka stands in a nowin situation, but few points with great legal significance emerged in course of hearing of the petition before the Andhra Pradesh High court. These are as follows:-

(a) Is an Individual entitled to file a petition relating to water dispute under Article 262 of constitution?

(b) Is the jurisdiction of the High Court under Article 226 barred by Article 131 of the constitution or section 11 of Inter-State Water Disputes Act, 1956?

(c) Can the Andhra Pradesh Government move the State High Court under Article 226, instead of original suit under Article 131 of the constitution if GOI fails to act?

(d) Is the duty of the Central Government limited to agreement of the parties without execution?

The points thus, raised at the time of hearing of petition in Andhra Pradesh High Court and as clarified and explained by that Court may be summarised as under.

With reference to question no (a), court held that the present controversy has to be resolved mainly between the state of Andhra Pradesh and the state of Karnataka. The petitioner’s interest shall not be in jeopardy as the state of Andhra Pradesh has taken up the cause of the people of the state of Andhra-Pradesh and a categorical statement has been made before the Court on behalf of the Central Government that it shall not letdown the people of either state. Therefore, the Court, in such a situation shall exercise the refrain of not entertaining the writ petition.

In Mr. Krishaiah’s case, the court has found that he had locus standi and that it had jurisdiction on the controversy. In other words the court has repelled the bar of jurisdiction used by Karnataka.

By way of disposal of the question no(b) court held that the Andhra Pradesh which is sorely aggrieved on the height of the Alamatti dam, can move the Government of India by a written representation to frame a scheme under section 6-A of Interstate Water Disputes Act,1956, constitute original and review authorities thereunder to enable it approach the original and review authorities within a reasonable time frame. If the GOI acts, frames a scheme constituting original review authorities, then it is open to Andhra pradesh to approach the original review authorities for appropriate relief. If the GOI fails to act, then it is open to Andhra Pradesh to move the State High Court
under Article 226 of the constitution for appropriate relief under Article 131, before the Supreme Court, which is undoubtedly maintainable.

As an answer to question no(d), instead of the finding of the court, an expert comment is available. According to Justice K.S. Puttaswamy (Retd) the power conferred on GOI under section 6-A of the amending Act (Act No XXXXV ) of 1980 is coupled with a duty to act and act without delay. For some inexplicable reasons, the GOI had failed to carry out imperative duty enjoined on it by section 6-A for well over 15 years in case of Krishna river. This the GOI, should have done at least when the argument between Andhra Pradesh and Karnataka had just begun and before the situation could become tense. He also opined in the context that, the power conferred under section 6-A of the act and duty to act does not require to be triggered by anybody. Nobody is required to move the GOI for it to exercise powers and discharge its duties under section 6-A of the Act.57

But here interesting enough to note that the Andhra Pradesh High Court accepted the contention of the petitioner and Andhra-pradesh Government that what was in dispute was the implementation of the award, which had already set at rest the

inter-state water disputes and, therefore, jurisdiction of the High Court under Article 226 was not barred by Article 131 or section 11 of the Act. But despite that it accepted the writ petition of the petitioner without mentioning any duty of the Central Government for the implementation of the award and even it rejected to give any certificate of fitness to appeal to the Supreme Court sought by the petitioner. However, a special leave petition filed by the petitioner against the order of the High Court is pending before the supreme court.

Subsequently petition filed by Andhra Pradesh before the Supreme Court sought its direction to Karnataka restraining it from raising the height of the Alamatti dam and on 6 October, 1998, Supreme Court by its order appointed the director of the National Institute of Hydrology, Roorkee, as commissioner to visit the dam site on the Krishna. The Division Bench of the Supreme Court comprising former Chief Justice, Mr. M.M. Punchchi and Mr. Justice K.T. Thomas had referred Alamatti dam dispute to a large bench as the issue involved questions regarding interpretation of Article 262 and section 11 of the Inter-state Water Disputes Act, 1956. Supreme Court had taken up further hearing of the matter on 2nd November, 1998, and on 3rd November, 1998 a three Judge Bench Comprising the Chief Justice Mr. A. S. Anand, Mr Justice V.N. Khare and Mr. Justice M. Srinivasan passed an order restraining the Karnataka Government.
from going ahead with the erection of crest gates at the controversial Alamatti dam.

Afterwords, a three Judge Bench of Supreme Court comprising the Chief Justice Mr. A.S. Anand, Mr Justice V N Khare and Mr Justice M.S. Shah on 23rd April, 1999 directed Andhra Pradesh and Maharashtra and the Centre to respond within a week to the Karnataka Government’s proposal that it should be allowed to impound 155 TMC feet water annually from the Alamatti dam on the Krishna river and thereafter on 3rd May, 1999 another three Judge Bench headed by the Chief Justice, Dr A.S. Anand ordered status quo in the Alamatti dam controversy. The Court also referred the two interlocutory application pending before it to the five Judges Constitutional Bench to which the original suits by Karnataka and Andhra Pradesh had been referred for wider consideration. After eighteen hearings stretched over three months, Supreme Court on 25th April, 2000, passed a unanimous judgement on the Alamatti Dam Controversy and the implementation of scheme B of the KWDT award. The five Judges Constitution Bench delivering the judgement held that KWDT had allowed Karnataka to rise the height of the Alamatti dam to 519.9 metre subject to clearance by the Centre and other authorities concerned. The Bench observed that though the Tribunal had not gone into this aspect of the matter, in the circumstances of the case and after going into the contentions of the rival parties, the tribunal had directed that Karnataka could rise the height to 519.6 metre.
The Court dismissed the original suit filed by the state of Karnataka - q.s.-1/1997 holding that scheme B is not part of the tribunal’s judgement and is not a binding decision. Further, the two contingencies on which the scheme is dependent for operation have not happened - neither have the parties consented nor has Parliament enacted a legislation as contemplated by the tribunal. Since it is not a binding decision scheme B cannot be notified under section 6 of the ISWD Act. In view this court also held that it was not necessary to go into the question of whether section 6-A was legislative or administrative in character.

Finally in the judgement Court held that if any of the riparian states seeks constitution of a tribunal for review of the award, the Central Government will constitute a tribunal to consider the reallocation of the water also the height of the dam.

The origin, nature and recent development of the Krishna river water dispute reveal that though it is a kind of almost settled water dispute but substantial controversy still remains regarding the redistribution of surplus water at the time of review of the award of the tribunal after 31\textsuperscript{st} May, 2000. It is also revealed that like Narmada water dispute, here also the controversy relating to the construction of a high dam persists but it is confined only to the question that whether such construction can maximise or minimise the surplus water benefit to the upper riparian and lower riparian states as the case may be which will be calculated at the time of review on the basis of 100 percent dependable
flow of the water instead of present 75 percent dependability and therefore, the issue of the construction of Alamatti dam does not at all touch the matters like whether high dam constitutes development or whether high dam creates any environmental hazards or not. Even the issue of oustees and rehabilitation of oustees does not arise here. But one common feature revealed in both these two disputes is that for the first time the individual groups and various people’s organisation have come forward with their claim that even in an inter-state water dispute they have their locus standi to raise such dispute as well as to claim review of the decision or award of the tribunal relating to such dispute and it is seen that judiciary has also responded favourably to such claims to give a democratic face lift to the dispute resolving process of an inter-state water dispute recognizing the fact that dispute is no longer concerns only to rich peasantry, irrigation bureaucracy and political elite.
D. The Godavari River Water Dispute

The Godavari is a major river in India. The river drains the eastern slopes of the western ghats and during its course eastwards into the Bay of Bengal receives the surface flow from a large part of the Deccan plateau. The river Godavari is the biggest of the east flowing rivers of peninsular India. It rises in the Nasik district of Maharashtra and flows in a south easternly direction through Maharashtra and Andhra Pradesh. The tributaries, Wardha and Wainganga of the Godavari originate in Madhya Pradesh. The tributaries Indravati and Sabari rise in Orissa. Some portions of Mysore also fall in the drainage basin of the river. The Godavari basin extends over an area of 1,20,777 sq miles which is nearly 10 percent of the total geographical area of India. The basin comprises areas in the state of Maharashtra, Andhra Pradesh, Madhya Pradesh, Orissa and Karnataka. The Godavari basin may be divided into twelve sub-basins namely, Upper Godavari, Pravara, Purna, Manjra, Middle Godavari, Maner, Penganga, Wardha, Pranhita, Lower Godavari, Indravati, Sabari. Thus, the Godavari river is by nature inter-state river and consequently dispute has arisen between some of the states in the basin over the allocation of waters to their respective territories for purposes of development.

To go back to the genesis of the Godavari river water dispute it is to be said that before the middle of the nineteenth century, there were tanks and small diversion works in operation, but no major irrigation work had been constructed in the Godavari river basin. The first major irrigation work namely, the Godavari Delta Canal system in the then province of Madras, was completed in 1877.  

On the Godavari river system, in addition to the Godavari Delta canals, the other major irrigation works were (a) Godavari Canals in Maharashtra constructed in 1915, irrigating about 50,000 acres; (b) Wainganga Canal in Madhya Pradesh, constructed in 1923, irrigating about 50,000 acres (C) Pravara Canals in Maharashtra constructed in 1926, irrigating about 60,000 acres and (d) Nizamsagar Canal in Andhra Pradesh, constructed in 1914, irrigating an area of about 1,30,000 acres. Despite this, the irrigation works were still few in number and the water supply was ample in relation to the demand upon it.

Apart from the above mentioned irrigation works, there have been large number of tanks and wells used for purposes of irrigation in the basin of the river Godavari. There are about 32,000 small tanks and diversions on the Godavari river system. Also water from the river is utilized for areas lying outside the drainage basin. So a fairly large part of the area irrigated by the Godavari Delta Canals lies outside the basin of the Godavari.  

59 Id at 1  
60 Supra note9, P-29.
In 1950, when the new constitution came into force, the entire Godavari river basins fell within the territories of the states of Madras, Bombay, Madhya Pradesh, Hyderabad, Orissa although prior to 15th August, 1947, the provinces of Madras, Bombay, Orissa, the central provinces, the princely states of Hyderabad, Baster and Kalahandi had riparian interests in the Godavari basin. With the adoption of the constitution for more intensive development of water resources of the river basin, important schemes such as the Ramapadasagar Dam, Upper Godavari Dam at Kushtapuram, Penganga Dam, Penganga at Amti, Sabari at Guma, Wain-ganga Reservoir and other projects were proposed by the states of Madras, Hyderabad and Madhya Pradesh.

It was at this time that the First Five Years Plan was proposed with an objective of planned economic development of the country. On 27th and 28th July, 1951 a conference was held in the Planning Commission, New Delhi, which was attended by the representatives of Bombay, Madras, Hyderabad, Madhya Pradesh and Mysore to discuss the utilization of supplies in the Krishna and Godavari basins but the state of Orissa, in spite of being a co-riparian and an interested party was not invited to the said conference. A Memorandum of Agreement allocating the flows of the said river basin amongst the concerned states was drawn up and annexed to the summary record of discussions. On being asked so by the Planning Commission the governments of Madras, Hyderabad, Bombay and Madhya Pradesh sent their letters of
ratification to the aforesaid summary record of discussion and memorandum on 17th August, 1951, 23rd August, 1951, 30th August, 1951 and 8th September, 1951 respectively. The said agreement was to hold good for 25 years.

Extensive territorial changes were made in the Godavari basin by the Andhra State Act 1953 as from the 1st October, 1953 and the States Reorganization Act 1956 as from the first November, 1956. The new states of Bombay, Mysore, Madhya Pradesh and Andhra Pradesh became the riparian states in place of the old states of Bombay, Hyderabad, Mysore and Madras. The Orissa became the necessary party to the dispute over sharing of waters of the Godavari basin. In view of the territorial changes, the Central Water and Power Commission drew up a scheme for reallocation of the Godavari waters but the scheme was not accepted by the states. An inter-state conference was held on the 24th, 26th and 27th September, 1960 but no settlement could be reached. The state government began to raise objections to the clearance of new projects on the basis of the 1951 allocations. In 1960 the State of Bombay bifurcated into the states of Maharastha and Gujrat and all the Godavari basin areas of the old Bombay state fell within the new state of Maharashatra. In this year also, the five riparian states proposed important schemes for the development of water resources and there were disputes between them relating to the utilization of the waters of the Godavari river system. On the 1st May, 1961 the Central Government appointed the Krishna Godavari Commission.
The commission found that without further data it was not possible to determine the dependable flow accurately.

The Central Government tried its bests to settle the dispute by negotiation. Several inter-state conference were held but the dispute remained unsettled. Fresh applications for reference of the dispute to a tribunal to be constituted under the Inter-state Water Disputes Act, 1956, were made by the state government of Maharashtra, Mysore, Orissa and Madhya Pradesh in 1968. All the four state governments alleged that the agreements of 1951 was not valid and binding and claimed equitable distribution of the Godavari waters. Madhya Pradesh also objected to the submergence of its territories by the proposed Inchampalli and Ipper project of Andhra Pradesh.

Eventually on 10th April 1969 the Central Government constituted the Godavari Water Disputes Tribunal. On the same day, the Government of India referred to the Tribunal for adjudication the water dispute regarding the inter-state river Godavari and the river valley thereof. In their reference, the Government of India requested the Tribunal to consider the representations of some of the states concerning the possibility of diversion of the Godavari waters to the Krishna river and the objections to the diversion by some of the other states.61

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61 Supra note 58, 3
Subsequently, on July 18, 1970 the Government of India, at the requests of the Government of Maharashtra, referred to the Godavari Water Disputes Tribunal the dispute concerning the submergence of its territories by the Pochampad, Trenchampalli, Swarna and Suddavagu projects of Andhra Pradesh.

Before the Tribunal few important issues were raised which the Tribunal systematically framed with its decisions are set forth in chapter II, and in chapter V of its report contained in volume one. The issues and decisions are stated below:

Issue No I was relating to the validity and enforceability of the agreement of allocation of the waters of the river Godavari which was concluded in 1951 between the states other than Orissa.

The tribunal held and disposed that such issue can no longer survive because of the following facts.

(a) Orissa is now a co-riparian state and therefore, not bound by 1951 agreement.

(b) Moreover, the agreement of 1951 was in operation for a 25 year only and the agreement had ceased to be operative since July 1976.

(c) In the meantime on 19.12.1975 another inter-state agreement was entered into between all the five riparian states for partial

62 Id. 34
allocation of the waters of the River Godavari and its tributaries.

Issue no II framed by the Tribunal for its disposal was whether the waters flowing through any state belong to that state and if the answer is positive what is the effect of it.

As because this issue which was raised at the instance of the states of Madhya Pradesh and Orissa was expressly abandoned by themself, the Tribunal did not proceed to dispose it.

Issue no III was relating to the direction that should be given for the equitable apportionment of the beneficial uses of the waters of the Godavari and the river valley thereof.

Dealing with the issue, Tribunal held that in the light of the agreement dated 7th August 1978 among the states of Madhya Pradesh, Maharashtra and Andhra Pradesh, issue be disposed of accordingly.

Issue no IV raised questions regarding submergence by projects of some states of the territories of other states.

Substantial part of this dispute was resolved by the agreements of the parties. Tribunal gladly recognized them and disposed the issue accordingly. The agreement dated 7th August 1978 between the states of Maharashtra, Madhya Pradesh and Andhra Pradesh provided for the submergence of the territories of Madhya Pradesh, Maharashtra, and Andhra Pradesh by Inchampalli project which will be a joint project, submergence of the territories
of Madhya Pradesh by Polavaram project and submergence of the territories of Maharashtra by Pochampad project and settled all questions and disputes regarding submergence by these projects. The agreement dated the 17th September 1975 between the states of Karnataka (Mysore) and Andhra Pradesh, being Annexure 1 to the agreement of the 19th December 1975 between the five states, settled dispute regarding submergence of the territory of Karnataka (Mysore) by singar project of Andhra Pradesh. The agreements of the 19th December, 1978 and 11th July, 1979 settled all questions and disputes regarding submergence by Pochamupad, Inchampalli, Talipuru, Polavaram, Lower Sileru project and Lower Sileru Irrigation Scheme, joint project on the river Sabari, storages of Maharashtra to be constructed in the territories of the state of Madhya Pradesh, pick up weir at Temurdo, submergence under storage in the territory of Madhya Pradesh and other questions of possible submergence to the satisfaction of the parties concerned. Thus, these agreements substantially disposed of issue no IV. The subsequent controversy with regard to the submergence of the territories of Madhya Pradesh and Orissa by the Polavaram had been settled by the direction of the Tribunal given in chapter IV of

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65 The Mysore State (Alteration of name) Act, 1973 Provides for alteration of name of the state of Mysore. Under section 2 of the Act, with effect from the 1st November, 1973, the state of Mysore shall be known as the state of Karnataka.
the report contained in volume I.  

All questions regarding submergence of the territories of Maharashtra by Swarna project of Andhra Pradesh had been settled by the agreement dated the 31st January, 1970 between the states of Maharashtra & Madhya Pradesh. Therefore, the agreement also partly disposed issue no IV.

With regard to Suddabhagu project, Andhra Pradesh stated that the reservoir scheme originally contemplated for this project had been dropped and the scheme as now proposed by Andhra Pradesh involved no submergence in Maharashtra. In view of this statement, the state of Maharashtra in its agreement on the 24th August, 1978 stated that it did not press the issue regarding the submergence due to Suddabhagu project. Hence, the dispute relating to the project raised under issue no IV was disposed of accordingly.

Issue No IV raised a general question whether it was lawful for the state of Andhra Pradesh to execute projects likely to submerge the territories of other states without their prior consent. The parties had carefully considered question of possible submergence of the territories of a party state by the projects of another state and had made adequate provision for them in the Agreements between them with regard to submergence. Parties also held the view that each case of possible submergence must be dealt with separately after

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64 Supra note 58, 35.
consideration of a concrete project involving submergence and all relevant facts bearing on the question of such submergence. Tribunal, therefore, opined that no project of the state of Andhra Pradesh involving submergence of the territory of other states is permissible without the prior consent of the affected states. Thus, issue no IV was partly disposed of accordingly.

Paras 3 and 4 of the petition jointly filed by the states of Maharashtra, Madhya Pradesh, and Andhra Pradesh on the 8th August, 1978 annexing the Agreement dated the 7th August, 1978 settled all disputes between the three states including the disputes raised in Issue no IV and the level of Inchampalli project. Para 3 of the petition jointly filed by the State of Orissa and Andhra Pradesh on the 2nd January, 1979 annexing the Agreement dated the 15th December 1978 settled all outstanding matters between the two states regarding Issues I to IV and the sub-basinwise allocation between them of the water of the Godavari and its tributaries below Pochampad. Paras 2 and 3 of CMP no 17 (4) /79-GWDT, dated the 16th July, 1979 stated that the Agreement of the 11th July, 1979, between the States of Orissa and Madhya Pradesh settled all outstanding matter between the two states regarding the sub-basinwise allocation of the water of the Godavari and its tributaries down stream of Pochampad and all disputes on issues I & IV. So according to Tribunal further question of issue IV survived and the issue was disposed of accordingly, Issue No V was

\[1\] Id. 36
regarding the possibility of diversion of waters from the river Godavari to the river Krishna.

The agreement dated 7th August, 1978 between the states of Maharashtra, Madhya Pradesh and Andhra Pradesh, the agreement dated the 4th August, 1978 between the States of Andhra Pradesh and Karnataka and the agreement between the states of Karnataka and Maharashtra evidenced by letters dated the 29th January, 1979, 30th January, 1979 and 31st January, 1979 and the final order of the Tribunal had settled the dispute concerning diversion of the waters from the river Godavari to the river Krishna.

The state of Maharashtra however, filed CMP No 17(8)/79-GWDT, dated the 15th October, 1979. The material contention of CMP contained in para 7 is as follows:

"Clause XIV (B) of the final order of the Krishna water Dispute Tribunal states that:

‘In the event of the augmentation of the water of the river Krishna by the diversion of the waters of any other river no state shall be debarred from claiming before any authority or tribunal even before the 31st May, 2000 that it is entitled to a greater share in the waters of the river Krishna on account of such augmentation nor shall any state be debarred from disputing such claim’."
So far as diversion of the Godavari waters to the Krishna from Polavaram barrage is concerned, the states of Maharashtra, Karnataka and Andhra Pradesh shall exercise the above liberty as the diversion and its consequences have been specifically agreed to by the three states. But if the diversion of the Godavari water to the Krishna takes place from any point other than Polavaram barrage, then the liberty to the parties as granted in clause XIV (B) of the final order of Krishna Water Dispute Tribunal should not be disturbed by the Report of this Honourable Tribunal.\textsuperscript{66}

State Government of Maharashtra submitted before the Tribunal to give order that what granted to the states of Maharashtra, Karnataka and Andhra Pradesh by clause XIV (B) of KWDT in its final order to continue unaffected and undisturbed except for the diversion of the Godavari waters from the Polavaram barrage which has been specifically agreed to and provided for in the agreements of the parties.

The state of Andhara Pradesh in its CMP no 17(10) /79 – GWDT, dated the 26th October, 1979 submitted that no decision or clarification can be made by the Godavari Tribunal regarding clause XIV (B) in the final order of KWDT.

The state of Karnataka did not submit any reply. The other
states viz the states of Madhya Pradesh and Orissa submitted their replies but they were not interested in this matter. On hearing the matter on the 2nd November, 1979, Tribunal concluded that in view of the Agreements filed by the parties and final order of the Tribunal, it was not necessary on part of it to make any comment or clarification on clause XIV (B) of the final order of the KWDT and therefore, issue no V was answered as aforesaid.

Issue No. VI was a kind of issue relating to general and other reliefs. Disposing such issue Tribunal held that the agreements filed by the parties and its final order provided for all the relief to which the parties were entitled and issue was answered accordingly.

After giving decisions of few such issues with findings, Tribunal on 7th July, 1980, set forth in chapter VII of Vol I its final order which is called award of the Tribunal.67

Under clause I, the Tribunal authorised the concerned states to make use of their respective underground water and observed that such use was not to be reckoned as use of water of the river Godavari.

Under clause II, it described various uses of water without laying down any order of priority in favour of one use or the other.

Under clause III (D) and (E), it observed that in the event of non-uses of water by a state in a particular year it would not be able

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67 Id, 38.
to claim additional use in subsequent years in lieu of that unused water nor will that state forfeit such water in future. Also such situation will not increase the share of some other state which incidently make use of that unused water share of the former state.\textsuperscript{68} Clause III also prescribed the measurement of water use as 100 percent of the quantity of any river for irrigation use, 100 percent of evaporation losses in the storage for lower use, 20 percent of the quantity of water of river for Industrial use etc.

Under clause V, the Tribunal preserved the agreements concluded by the respective state earlier or during the pendency of the Tribunal and made them a part of the order of the Tribunal.

The Tribunal even issued directions to the Central Water Commission under clause VI (1) (i) to clear Polavaram project as expeditiously as possible, for the given dimensions.

Under clause VII the Tribunal gave liberty to all the concerned states to make use of the water, failing to their share, in whatever way they liked to use it within their territory provided such use was not inconsistent with the order of the Tribunal.

In terms of clause VIII (a) the use of the water of the river Godavari by any person or entity of any nature whatsoever, within the territory of that state was to be reckoned as use by that state and

\textsuperscript{68} Supra note 17, p.268.
under clause VIII (b) the Godavari waters were to include the water of the main stream of the Godavari river, all its tributaries and all other streams, contributing water directly or indirectly to the Godavari river. Under clause VIII (d) the “water year” was to be reckoned as commencing on 1st June and ending on 31st of May.

According to clause IX of the final order of the Tribunal the alteration, amendment or modification of all or any of the foregoing provisions of the order could be made by agreement between the parties or by legislation by the parliament.

The Tribunal also expressed its earnest hope that while making its use they (the inhabitants of Godavari basin) will take all possible steps to prevent wastage and pollution of the waters of this holy river.

Thus from the foregoing analysis of the Tribunal’s award and manner of its functioning, it becomes clear that the Tribunal directly encouraged and preferred the settlement of water disputes by negotiation and agreements and at the same time it is also revealed that in the case of Godavari water dispute, the parties have adjusted their claims for the utilisation of the waters of the river Godavari and its tributaries through a number of solemn agreements entered into by them from time to time.\(^9\) Party states in this respect displayed remarkable spirit of accommodation and sincerity of purpose in their efforts to reach a settlement of this

\(^9\) Supra note 12, PP 145-163.
highly technical and complicated water dispute through negotiations and mutual efforts establishing unique precedent for resolving water disputes that may arise in future.

From the discussion of the origin, nature and up to date position of Godavari water dispute it may be concluded that it is a settled river basin, where the rights of parties are defined under an agreement which is substantially incorporated formally by an award of the Tribunal. In conclusion, it can also be said that it is one of those settled river basins in India where so far no post award resentment has yet emerged and that is why, it has been argued that the settlement of disputes by the parties themselves through negotiation is the best method for resolving any kind of river water dispute.
E. The Cauvery (Kavery) River Water Dispute

The Kavery is also known as Dakshin Ganga or Ganga of the south. The Kavery rises at Talakaveri on the Brahmigiri hills of the Western Ghats in the district of Coorg at an elevation of 1341 m. The course of the river through the Coorg district is tumultuous. At the end of this reach it is joined by the first important tributary, the Harangi. The river has been dammed at about 19 Km north-west of Mysore city and two important tributaries, namely the Hemavathi and the Lakshmanatirtha join the Kaveri into the reservoir. It continues to flow eastwards for 15 Km up to Srirangapatnam and then changes its course south-eastwards. In the next 25 Km it receives the Kabbni and the Suvarnavathi and takes a north-easterly direction piercing through the Eastern Ghats near Sivasamudram. At Sivasamudram, the river falls by about 97m in a series of falls and rapids and after flowing through a very narrow gorge, continues its eastward journey and forms the boundary between the states of Karnataka and Tamil Nadu for a distance of about 64 Km. Below Sivasamudram it receives the Simsha and just before entering Tamil Nadu, it receives the Arkavathi.

In Tamil Nadu, the Kavery Continues to flow eastwards upto Hoganekal falls and takes a southerly course and enters the Mettur reservoir. The river leaves the Eastern Ghats before Mettur and is joined by Bhavani about 45 Km downstream. The river thereafter flows a more easterly course and is joined by the tributaries, the Noyil and the Amaravathi before entering the Tiruchirapally district. The river here is wide with a sandy bed in the reach and is Known as the "Akhanda Kaveri". Immediately below Tiruchirapally, the river splits into two branches which are controled by the Upper Anicut. The northern branch called the coleroon is the main flood carrier and it flows in a north-easterly direction to enter Bay of Bengal near Porto Novo. The southern branch continues to be called the Kaveri. This branch further divides the Kaveri and the Vennar below the grand anicut built downstream of the Srirangam Island. These channels are utilised as main Canal for irrigation in the delta network of canals. Some branches find their way to the sea and fall into the Bay of Bengal while others are lost in the field. The Cauvery branch falls into the Bay of Bengal at Kavaripatnam, 13 Km north of Tranquebar as an insignificant stream.

The total catchment area of cauvery basin is about 32,600 square miles. distributed as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Area in Sq.Km</th>
<th>(Square Miles)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kerala</td>
<td>2,849</td>
<td>(1.00)</td>
</tr>
<tr>
<td>Karnataka</td>
<td>34,447</td>
<td>(13,300)</td>
</tr>
</tbody>
</table>
Tamil Nadu 46,879 Sq.Km. (18,100 Square miles)
Pandicherry 259. Sq Km. (100 Square miles)74

The river has a total yield of about 23 million cubic metres (about 18.4 million area acre feet). It has a total length of 805 Km and a drainage area of 80,290 Km. This is acclaimed as one of the best regulated rivers of the country whose 90-95 percent of the flow is utilised for irrigation (1.0 million hectares) and hydel power generation bringing wealth and prosperity to its entire basin area.75

Though river draws its 75 percent of waters from Karnataka, its major part of basin area (57.80%) lies in Tamil Nadu where a number of irrigation schemes are utilising its water since olden days.74 It is also a fact that the Kaveri is the only major river of the country whose entire usable water is almost fully utilised at present and this makes the reallocation exercise extremely difficult and touchy one.75

Cauvery Water Dispute is a typical illustration of the dispute between a province of British India and princely state about the utilisation of the water resource. However, the history of development of the Cauvery river dates back the pre-christian era of the Cholas who had built an excellent irrigation system in the

72 Supra Note 71, 113
74 Supra Note 78, 430
75 Supra Note 1, 116
Tanjore Delta, as well to the second century A.D. when the Grand Anicut was constructed at the head of the Delta. One of the first irrigation works constructed by the British in India was the Upper Anicut on the Cauvery, in 1836, and one of the first hydro electric power station in India was constructed on this river, in 1902.\(^\text{76}\)

Inter-state differences regarding the use of the water of this river, between Karnataka, erstwhile Mysore state and Tamil Nadu, formerly Madras are stated to have arisen as far back as 1807. The Cauvery water problem has it genesis in the 11\(^\text{th}\) century when Chokkanath Naik of Madurai was up in arms against Chikka Deva wodeyar of Mysore. Letters of objection were issued by Madras in 1800 to desist Diwan Poornaiah of Mysore from undertaking irrigation project which culminated in the signing of the agreement in 1892.\(^\text{77}\) Therefore, dispute is according to official records, almost of Century old when there was a agreement of 1892 between the Madras presidency and erstwhile Mysore State.

Before the agreement of 1892 the representatives of the British Province of Madras and the princely state of Mysore held a Conference in 1890 to agree on "a basis on which irrigation questions between the two Governments could be settled". But the Conference did not succeed in bringing about an agreement due to differences between the states over the use of Cauvery river waters.

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\(^{76}\) Supra Note 78, 113

At that time Madras Government raised objections to the new irrigation project proposed by then Mysore state. The basis of the Madras Government’s objections was that the Madras farmers had acquired easementary rights from over Cauvery waters by prescription from the Pre-Christian era of the Cholas who had built an excellent irrigation system in the Thanjavur delta. The Contention of the Madras Government was that these rights would be affected if the Mysore Government were to build new irrigation works in the Cauvery basin. But Mysore state opposed such claim of Madras Governments in the memorandum submitted by Sir Seshadri lyer, the then Dewan of Mysore state to the resident of Mysore. The opinion of the Mysore state was that a right of easement can never be acquired by a mere primitive user. It cannot be said that Mysore never intended to store its rainfall for irrigation and other purposes to a greater extent than it used to do at some point of time in the remote past. It is indeed more reasonable to infer that the user in question was permitted his rights only so long as the state did not wish or was not able to store more water.

On the question of prescriptive rights, the memorandum stated that the right by prescription cannot be claimed with regard to waters which flow as waste or over the existing irrigation works in Madras, as the essence of a prescriptive right is enjoyment and use, which cannot be predicted or estimated from what is allowed to run as waste.

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Along with the Dewan of Mysore, the subject was raised most vociferously by an English member of the Assembly in 1891. Mr Elliot of the Planters' Association said that Mysore should have full use of the water of the Cauvery for irrigation and should be freed from interference on the part of the Madras Government as long as the water was restored to its original channel.\(^7^9\)

Inspite of such arguments of the then Dewan of Mysore, Mysore lost its case and had to sign an agreement on 18\(^{th}\) February, 1892. The agreement was entitled: “Rules Defining the Limits within which no New Irrigation Waters are to be constructed by Mysore State without previous reference to Madras Government”. This agreement imposed restrictions on both Mysore and Madras which amounted to the waiver of some of the rights of Mysore as an upper riparian state and which goes against the classical theory of the absolute right of the riparian states. Clause II of the Madras-Mysore Agreement of 1892 reads as follows:

The Mysore Government shall not without the previous consent of the Madras Government or before a decision under Rule-4 build (a) any new Irrigation Reservoir across any part of the fifteen main rivers ............

Clause III further adds that,

The Madras Government should be bound to not refuse such consent except for the protection of prescriptive rights already

\(^7^9\) supra Note 36 at 37
acquired and actually existing, the existence, extent and nature of such rights ---------- being in every case determined in accordance with what is fair and reasonable under all circumstances of each individual case. 89

Critic of the agreement of 1892 go on saying that it was an unjust agreement as the title itself suggest that this agreement imposes all possible types of restrictions on Mysore without imposing corresponding obligation on Madras. This is not the type of agreement which could be said to be based upon reciprocity and mutuality. It has got all the characteristics of a dictated agreement: an agreement dictated by a victorious state to a vanquished state. They also argue that by the terms of the agreement a lower riparian state was given a veto power over all the irrigation works of an upper riparian state whether or not it suffered any damage. Is an agreement opposed to all cannons of justice and fairplay. It is for them, because of inferior constitutional position which Mysore was occupying under the British Government. It was being controlled by a British Resident. As a matter of fact he was the real ruler of the state. On the other hand, at that time Madras Presidency was administered by a Governor. His position in the political setup of the country in those days was only next to the Governor-General. When compared to a Governor the status of a Resident was quite inferior. Even the Dewan in those days were appointed with the approval of Government of India. According to the critic. Mysore

89 Supra. Note 12 at P. 200.
was coerced into accepting that agreement and therefore, the origin of the present dispute lies in 1892 Agreement.81

After 18 years of the 1892 agreement when in 1909 another dispute arose between Mysore and Madras regarding the use of the Cauvery river, the second agreement of 1924 was signed between them. In 1909 Mysore Government proposed to construct a dam at Kannambadi (Krishnarajasagar) across the Cauvery in Mysore territory with a capacity of 41,500 million cubic feet of 0.95 million acre feet, which was objected to by Madras since Madras had its own project in view, namely Cauvery mettur project, with a storage at Mettur of 2265 million cubic metres (80,000 million cubic feet) or 1.84 million acre ft., for generation of power at Mettur and extension of irrigation to 32,395 acre of new land for improving water distribution in the old canals of Cauvery delta and increasing double cropped land in the delta. After a reference to the Government of India, permission was accorded to Mysore project but for a reduced capacity reservoir only 11,000 million cubic feet (or 0.25 million acre ft.). Mysore apparently accepted the condition but at the time of execution of the project, the dam was taken up with foundation for the earlier desired full storage of 41,000 million cubic feet thereby reopening the question of dam reservoir of that capacity. This was opposed by the Madras Government as it was feared that its construction would affect the Thanjavur delta.

81 Supra note 77 at 546.
Sensing the incompatibility of the stands of Madras and Mysore, the Government of India referred the matter to arbitration under rule IV of the Agreement of 1892. Sir H.D. Griffin was appointed arbitrator and M. Nethersole, the Inspector-General of Irrigation in India was appointed the Assessor. It was referred by the Government of India because according to the above clause dispute should be referred to the final decision either of arbitrators appointed by both Governments or the Government of India.

The Tribunal gave its award in 1914 favouring Mysore. Disposing issue number 4 framed by the Tribunal relating to the construction of Krishnarajasagar Dam, Tribunal observed that the construction and working of the dam will not necessarily interfere with the prescriptive rights of Madras. The award of Tribunal was also ratified by the Government of India.

It is interesting to note here that on appeal by Madras Government, the secretary of state for India suspended the award although no provision existed under the 1892 agreement for an appeal against the award of the Arbitrator. Sir C.P. Ramaswamy Iyer, it is reported, played no small part in influencing the secretary of state. The British Government consequently prevailed upon the Government of Mysore to reopen fresh negotiations with the Government of Madras with a view to an amicable settlement and consequently the agreement of February 18, 1924 was signed.

According to the 1924 agreement, the Mysore state was entitled to extend irrigations to an extent then fixed at 1,10,000
acres in Mysore, to be carried out by means of reservoirs constructed on Cauvery and its tributaries, namely, Hemavati, Lakshmanatirtha, Kabani, Suvarnavati and Yagachi (upto the Belur bridge) with effective capacity of 45,000 M.C.F. The Madras Government also gave assent to the construction of the Krishnarajasagar dam by Mysore. The Madras Government was to limit the area of irrigation under their Cauvery Mettur project to 3,01,000 acres with the capacity of the Mettur reservoir at 93.5 T.M.C.F. Should Madras construct any new storage reservoir on the Bhavani, Amravati or Noyil rivers in Madras, Mysore was at liberty to construct storage reservoir on the a tributary as an offset with a capacity not exceeding 60 per cent of the new reservoir in Madras. The agreement contemplates recommendation of some of the arrangements in 1974 “in the light of the experience gained and of an examination of the possibilities of the further extension of irrigation within the territories of the respective Government...”. The agreement also provided for settlement of disputes regarding the interpretation of agreement through arbitration or if the parties agree, through the Government of India.\(^2\)

By supplementary agreements entered into the 17\(^{th}\) June 1929 and 22\(^{nd}\) June 1929, some modifications were made to the detailed rules of regulation incorporated in the 1924 agreement.\(^3\)

\(^{2}\) Supra Note 71 at p.124
\(^{3}\) ibid., 127
Consequent upon this agreement Mysore completed the Krishnarajasagar project in 1929 and Madras on its side completed the Mettur project in 1934.

Like 1892 agreement, 1924 agreement has also been subject to criticism from the observer and analyst of the agreement. According to Berber "the Cauvery dispute between Mysore and Madras, settled in 1925 was a dispute between British India and the other was a dependent princely state under the British suzerainty. This dispute was not settled by the application of law, but through the authoritative decision of the sovereign power or the British Crown"84.

The agreement of 1924 would hold good for about twentyfive years. This was more for political reasons since till 1947, the British Resident was present. After Independence, problems started brewing and by 1950 difficulties arose out of the implementation of three new irrigation projects i.e., Mettur High Level Canal; Kattalai Bed Regulator, and Pullambady Scheme by the Madras Government on the main. The first is the first Five year plan scheme and the other two are second plan projects. The Mettur High level canal is taken off directly from the Mettur dam and the other two schemes are on the main Cauvery River below the Mettur dam. The Government of Mysore (Karnataka) objected to the Madras state (Tamil Nadu) taking up these projects. Their

Contention was 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. Since the Kattalai Bed Regulator and Pullambady schemes were on the main river, these could not be taken up by Madras with regard to the Mettur High level Canal taking off from the Mettur dam itself. It was pointed out that the project was never conceived as a storage reservoir for the direct supply for irrigation but on the other hand was only taken up as a protection for regulation of supply of water to the existing extent of irrigation in the Tjunjore Delta. According to Mysore, agreement permitted Madras to construct new irrigation projects only its three tributaries and if the Madras Government did so Mysore was at liberty to construct new reservoir on the tributaries of the Cauvery within its territory to the extent of 60 per cent of the capacity of the new reservoir in Madras. Mysore apprehended that since the 1924 agreement was to be revised in 1974 the new uses of the river by Madras might seriously prejudice its case at the time of revision as the existing uses then might create prescriptive rights in favour of Madras.

The two projects, namely Kattalai Bed Regulator and Pullambady scheme were given clearance by the planning commission on the assurance of the Madras Government that the

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85 Supra Note 9, P 46
utilisation of water for these schemes may not be considered to have bestowed any prescriptive rights on Madras.

Regarding the Mettur High level Canal, the contention of the Madras Government had been that no specific approval of the planning commission was needed as it was entitled to increase its lands under irrigation to 3,01,000 acres. Then Mysore Government referred the matter for arbitration. However, the Madras Government objected to this and stated that negotiation leading to the agreement between the state were inadmissible in argument subsequent to the conclusion of the agreement where the agreement is clear and unambiguous. This statement obviously refers to the 1924 agreement.

The two Governments had also been complaining against each other regarding lack of communication of information in respect of project of common interests. In this connection they referred to the provisions of clause 10 (viii), of the said agreement of 1924 which created an obligations of unilateral nature as also those of clause 10(vi) which created obligations of bilateral character. In this regard both the state Government, had been alleging that the other party is going ahead with its schemes without supplying to its proper prior information as stipulated in the said Agreement. In pursuance of clause 8 of annexure I to 1924 Agreement, a Supplemental Agreement was arrived at on

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86 'Fresh Attempt to settle the Cauvery Water Dispute'-Report, Capital, Calcutta, 23rd April, 1970. P. 703.
June, 17, 1929 between two parties where they agreed to adopt all regulations subsequent to July 1, 1929 specific discharges for the respective months in place of averages referred to in clause 8 of annexure 1 of 1924 agreement. Under another supplemental agreement in 1929 the two parties reached some decisions regarding fixation of transmission losses etc. By virtue of another Agreement in the year of 1933 the two parties agreed, inter-alia, to the construction of some new anicuts and tanks and distribution of water of the Swarnamukhi tributary of the Hagari between the British Agali channel and the Mysore Kittagali Channel.

By this time, the dispute got another dimension as a result of post-independence reorganisation of political units in India and consequent change in contesting parties to the dispute. The State Reorganisation Act, 1956 changed the boundaries of certain states. Thus, the erstwhile princely state of Travancore became a part of Kerala and therefore, Kerala also started laying claims to some share in the Kavery waters as some tributaries of Kavery have their catchment area in erstwhile Travancore state. Kerala made these claims notwithstanding the fact that Travancore was not a party to the Agreement of 1892 or that of 1924. Also section 108 of the States Re-organisation Act, 1956 stipulated that the agreements affected by the reorganisation of states should be revised by the reorganised state by November 1, 1957 in order to make them respond to the new territorial adjustments.
Thus, the States Reorganisation Act of 1956 and the revision clause of 1924 agreement after fifty years, augmented the feeling of deprivation of Karnataka that the 1924 agreement has been operating harshly on it on account of the fact that whereas 75 per cent of the catchment area of the Cauvery basin lies within its territory, its utilisation is much less and therefore its change is urgent and foremost necessary.

Along with this feeling certain development further precipitated the crisis between the two states. The Mysore Government appointed a technical committee which had suggested the Mysore Government to execute six major projects for damming and diversion of the Cauvery before 1974. Since the Madras Government undertook the three projects without concurrence of the Mysore Government, the committee had urged the Mysore Government to go ahead with its schemes without waiting for the approval of the Madras Government.

In a meeting of the Southern Zonal Council, Tamil Nadu, Karnataka and Kerala agreed to settle among themselves dispute relating to the Hemavathi Irrigation Project on River Hemavathi, a tributary of Kavery, lying in Karnataka. It was also decided that the Karnataka-Kerala dispute regarding Kabini project on Kavini river, another tributary of Kavery should be settled between these two states.
Subsequently an agreement was signed amongst the Government of Mysore (Karnataka), Tamil Nadu and Kerala, regarding Kavery waters, on May 31, 1972, wherein it was resolved that serious attempts should be made to resolve by negotiations, the Kavery dispute as early as possible and that, to facilitate that, the Central Government may appoint a fact-finding committee consisting of engineers, retired judges and, if necessary, agricultural experts, to collect data and that the Central Government would assist with the help of the said fact-finding committee, in arriving at a settlement of the dispute within six months.

The 1924 agreement expired in 1974 and since then efforts are being made to arrive at an amicable solution to the differences between the states. As a result of such ongoing process, an understanding was reached, amongst the Government of Karnataka, Kerala and Tamil Nadu, in an inter-state meeting held on 25 and 26 August 1976, regarding the use and development of Kavery waters. As a result of this understanding the existing utilisation of Kavery waters was agreed as 671 T.M.C. comprising 489 T.M.C. by Tamil Nadu, 177 T.M.C. by Karnataka and 5 T.M.C by Kerala. It was also agreed that in a normal year the existing areas under irrigation shall be fully protected. The surplus water were to be shared by Tamil Nadu, Karnataka and Kerala respectively, in the ratio of 30 : 53 : 17. The said understanding also envisaged the creation of 'Kavery Valley Authority', for
whose effective functioning, rules were to be prepared by the committee of secretaries of the said three states. But after that in 1977 M.G. Ramchandan of AIDMK coming in the power as a Chief Minister rejected the agreement unilaterally without thinking the problems and its future implications. It was a historical blunder on the part of the Tamil Nadu Government.

In the meantime, in 1971, writ petitions number 303 and 304 were filed in the Supreme Court of India seeking directions from the Union of India to refer the dispute to a tribunal under the Inter-State Water Disputes Act of 1956. However, these had to be withdrawn on 24 July 1975, on account of the suspension of fundamental right during the emergency. Earlier a suit had been filed in the Supreme Court by the State of Tamil Nadu under Article 131 of the Constitution but was subsequently withdrawn for political consideration and in anticipation of evolving a mutual and negotiated settlement.

A petition was also filed on 18 November 1983 by the Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vilvasayigal Nala Urimai Padhugappa Sangam (Society for the Protection of the Irrigation and Agricultural Rights of the Tamil Nadu Farmers of the Cauvery), making the Union of India, the Government of Tamil Nadu and the Government of Karnataka the respondents. The writ petition was filed under Article 32 and 262 of the constitution.

\[\text{\textsuperscript{75}}\] Sapra Note 75, at P-25
\[\text{\textsuperscript{76}}\] Supra Note 36 at P-45
In the petition, the petitioners said they were entitled to the lower riparian rights of the Cauvery river for cultivating their land over the years. The petitioners alleged that the inflow into the Cauvery at the Mettur Dam point as also downstream had considerably diminished due to the construction of new dams, projects and reservoirs across the River Cauvery and its tributaries by the state of Karnataka within its boundaries. The petitioners further alleged that the sharing of the Cauvery waters between the then Madras State and the princely state of Mysore was governed by a set of agreements entered into during 1892 and 1924.

The state of Karnataka filed affidavits opposing the maintainability of the petition as also the tenability of the plea for relief. The Union of India and Ministry of Water Resources also opposed the maintainability of the petition relying upon section 11 of the Inter-State Water Disputes Act of 1956.

During the pendency of this writ petition before the Supreme Court several attempts were made through bilateral and multilateral talks for a negotiated settlement for equitable distribution of the Cauvery waters, no solution could be reached and the problem continued and hence the parties became impatient. The Tamil Nadu Government convened an all-party conference on July 27, 1989, which decided that if the bilateral talks failed, the dispute should be referred to a Tribunal. Subsequent to this conference the Tamil Nadu chief minister in a statement alleged that the Karnataka
Government, then under president’s rule, was using delaying tactics, and announced that the Tamil Nadu Government, pursuant to the resolution of all party meeting would request the Union Government to refer the issue to a Tribunal.\(^89\)

In the meantime, disposing the writ petition of the farmers of Tamil Nadu, the Division Bench of the Supreme Court, comprising J.J Ranganath Mishra, P.B. Sawant and K Ramaswamy, directed the Union Government on May 4, 1990, to fulfil its statutory obligation under section 4 of the ISWD Act, 1956 and notify in the official gazette the constitution of an appropriate tribunal, within a period of one month, for the adjudication of the Cauvery Water Dispute.\(^90\)

The Central Government, accepting the direction of the Supreme Court, constituted the Cauvery Water Dispute Tribunal by notification dated 2nd June, 1990, under the powers conferred by section 5 of the ISWD Act of 1956.\(^91\) The Tribunal was constituted with Mr. Chittotosh Mookerjee C.J. (Ret). Bombay High Court, as its Chairman and Justice S.D. Agarwal of the Allahabad High Court and Justice N.S. Rao of the Patna High Court as its other members.

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\(^{89}\) Indian Express, August 1, 1989
\(^{90}\) Indian Express Mar. 5, 1990, P.7
\(^{91}\) The Notification No. S.O. 437(E) dated 2nd June, 1990 issued by the Ministry of Water Resources of the Union Government in this regard stated that the Central Government was of the opinion that the said water dispute could not be settled by negotiation. Indian Express June 1990, 1
In September, 1990 Tamil Nadu and Pondicherry sought interim relief before the Tribunal to restrain Karnataka from utilising more waters than that used by it as on 31.5.1972 and also from constructing new projects in the river basin. Tamil Nadu and Pondicherry being the lower riparian states, applied for such interim relief in the form of release of specific quantum of Cauvery water for saving the standing crop of paddy.

On 5th January, 1991 the Tribunal denied itself the power of granting relief on the interpretation that under the Inter State Water Disputes Act 1956, the Tribunal had only limited jurisdiction and lacked inherent powers like ordinary courts. The Tribunal held that interim relief asked for by Tamil Nadu were not connected with the main 'water dispute' referred to it and hence, it could not grant such relief. Further, the issue of power to grant interim relief could have been referred to the Tribunal as the subject matter of dispute by the Central Government, which was not done in this case. The Tribunal also considered the issue whether the granting of interim relief would be in exercise of incidental or ancillary powers. The Tribunal concluded that incidental and ancillary powers should relate to the dispute referred and not to any other matter including grant of interim relief. The Tribunal would limit its power only to the adjudication of the disputes referred and exercise of other ancillary powers for the effective adjudication thereof.

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Tribunal's interpretation of the various provisions of 1956 statute led to this conclusion.

Aggrieved by the Tribunal's order Tamil Nadu and Pondicherry filed special leave petition to the Supreme Court. These appeals were converted into civil appeals and heard together. On appeal to the Supreme Court it was contended that the constitutional scheme under Article 262 had excluded adjudication on the allocation of interstate river waters from the jurisdiction of the Supreme Court and consequently no appeal would lie. The Court speaking through N.M.Kasliwal J, on behalf of MM Punchi, R. M. Sahai JJ and himself, negatived the above argument saying that what was constitutionally prohibited was adjudication by Supreme Court of the river water disputes. The Constitution did not contemplate the ouster of the Supreme Court's Power in laying down the frontiers of jurisdiction of a tribunal constituted under the Act. Thus, upholding its power to entertain the appeal, the court directed the Tribunal to decide the application of Tamil Nadu and Pondicherry for release of waters in the interim on the merits as forming part of reference of the dispute but left open the larger question of Tribunal’s power to grant interim relief. Therefore, the order of the Tribunal denying interim relief was setaside by the court in its judgement delivered on 25th April, 1991.

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93 Alice Jacob, Judicial process Vis-a-vis Inter-state River Water dispute, Constitutional Law II, Annual Survey of Indian Law, Vol XXVII, II, New Delhi, 1991, P 213
Accordingly, on 25th June, 1991, the Cauvery Water Dispute Tribunal passed a second order on the relief sought by the Government of Tamil Nadu and the Union Territory of Pondicherry. The Tribunal in its orders directed Karnataka to release 205 tmc of water in Tamil Nadu’s Mettur reservoir annually from June to May, taking the average inflow into Mettur reservoir during the last ten years as the point of reference. Further it also decided on the monthly release of water. Tamil Nadu was directed to deliver to Pondicherry 6 TMC water in a regulated manner. Karnataka was further directed not to increase the acreage under irrigation beyond the existing 11.2 lakh acre. Tribunal refused to fix inflow of water into the Mettur Dam on the basis of a consensus arrived at among the riparian state on 29th May, 1972 as many changes had occurred since then, such as the construction of additional dams, reservoirs and other irrgational facilities. These directions were to remain operative till the final adjudication of the dispute.94

Tamil Nadu Government was unhappy, but willing to abide by the decision of the Tribunal due to certain compulsion. Summing up the Tamil Nadu Government’s reaction, Mr. Jayalalitha said, “we are not happy with the award, but interim award is a relief to us to save the withering crops in the Cauvery delta”.95 The reasons for unhappiness of the Tamil Nadu

Government were that the Tribunal did not pay any heed to the Tamil Nadu Government's request to release 302 tmc, the figure arrived at on the state's actual requirement. Instead, the Tribunal had used the average annual release to Tamil Nadu during the last three years as the yardstick. Tamil Nadu also contended that the Tribunal's basis for calculations was flawed as Tamil Nadu has had to literally beg Karnataka every year for adequate quantity of water. And every year, Karnataka has been releasing for less than the requirement in first flush and later condescending to make piecemeal releases of five (5) to ten (10) tmc's and this basis constitutes average of 205 tmc.

On the other hand, Karnataka reacted sharply to the Tribunal's order. It argued that the Tribunal had not provided for any relief in case the monsoons were to fail. Karnataka also contended that Tamil Nadu's water management techniques are flawed, resulting in under utilisation of its existing resources. Such contention was also supported by S.G.Balekundry, an irrigation and water management wizard from Karnataka. He said "Tamil Nadu lets some thing like 117 tmc ft of water into the Bay of Bengal". Despite that he said "Tamil Nadu claims a large share of the waters, saying that it is what it has been getting historically".90

Another expert, Dr. N. P. Patil, Director of the Indian Institute of Socio-economic studies in Bengalore, voicing the same line of

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argument said that the CWDT had not placed any limit on the area to be irrigated in Tamil Nadu, unlike on Karnataka. He also observed, “if Tamil Nadu uses water judiciously, the area under crops can be doubled”97. Karnataka Government also declared that the award under ISWD Act as it had been past without investigation and based on incomplete pleadings. S.Bangarappa, the then Chief Minister of Karnataka said “The order is clearly beyond the jurisdiction of the Tribunal and is far removed from all legal, practical and actual realities”98.

Under such circumstances, although the Tamil Nadu Government was willing to abide by the decision of the Tribunal, the Karnataka Government would have nothing of it. Chief Minister S. Bangarappa began lobbying the centre not to have the Tribunal’s order gazetted which was necessary to make the Tribunal’s order effective, when it became clear to the Tamil Nadu Government that Narasimha Rao (Central Government) was reluctant to pressure Bangarappa into honouring the award, the then chief minister Jayalalitha decided to go on offensive.

The AIADMK leader’s first step was to announce a statewide bandh on 26th July, 1991. S. Bangarappa responded by calling for a counter-bandh, which he also scheduled on 26th July, 1991. At the same time, Karnataka Government decided to petition the Supreme Court to reverse the Tribunal’s award. Meanwhile the

98 Ibid
Tamil Nadu chief minister tried to pressure Central Government into having the Tribunal’s order gazetted. Ms. Jayalalitha gave a threat that her Government would stop supporting the minority Government the Centre if the Central Government does not comply.

The Karnataka Government’s next move was unprecedented in the history of nation’s river water dispute. On the advice of state minister Veerappa Moily, S. Bangarappa got an ordinance promulgated on July 25, 1991 as ostensibly aimed at protecting the areas which were irrigated by the Cauvery and its tributaries. Called the ‘Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991’ later replaced by an Act, it was clearly aimed at controverting the Tribunal’s interim award. The ordinance made it a duty of the State Government to provide specific quantities of water to different areas in Karnataka. It made the decision or order of any court or Tribunal inapplicable except if it was the final decision of the Cauvery Water Dispute Tribunal. The Bangarappa Government had the option to appeal. But it took recourse to such legalistic legerdemain and promulgated the Cauvery Basin Irrigation Ordinance, quashing the jurisdiction of the Tribunal setup under a Central Act.

Tamil Nadu Government reacted angrily to Bangarappa’s pre-emptive move. Ms Jayalalitha described the ordinance as “repugnant to the Constitution” a view which is shared by the vast majority of legal experts. Even some Karnataka congressman felt
that Bangarappa had overstepped the limit. K. Nage Gowda, MLA, said “the move regarding the ordinance was wrong. How can we go against the supreme court or the Central Government?”

Karnataka Government, however, was unmoved by such criticism. On the other hand, Central Government avoided the hardline approach of striking down the state’s move and took a softer course by referring the matter to the supreme court for its advisory opinion on 26 July, 1991. The questions forming part of the reference were:

1. Whether the ordinance promulgated by the Government of Karnataka and the provisions thereof are in accordance with the constitution.

2. i) Whether the order of the Tribunal Constitutes a report and decision within the meaning of section 5 (II) of the Inter-state Water Dispute Act, 1956.

   ii) Whether the order of the Tribunal is required to be published by the Central Government to make it effective

3. Whether the Water Dispute Tribunal Constituted under the Act is competent to grant any interim relief to the parties in the dispute.

99 Supra Note 94 at P 41
The dispute attained a different dimension the following day (27 July, 1991). The Union Minister of State for Labour, Vazhapadi Ramamurthy, resigned from the council of ministers due to Union Government's decision to refer the Karnataka ordinance to the Supreme Court. He described such decision as "dilatory" and served to only complicate the issue further. Tamil Nadu Chief Minister Jayalalitha hit back in anger, dubbing the Supreme Court referral an "eyewash" that "intended to delay justice to Tamil Nadu."


Karnataka contended that the onus of proving the constitutionality of the ordinance should be on those who challenged its validity. The ordinance fell within the legislative competence of the state under entries 17 (waters) 14 (agriculture) and 18 (land) of the state list. Under entry 17 the state could legislate with regard to waters of inter-state rivers subject to the provision of entry 56 of the union list which dealt with the regulation and development of interstate rivers to the extent to which there existed a parliamentary declaration of public interest. Entry 56, however, did not denude the state power over river waters as the only legislation under it was the River Boards Act of 1956 which had remained a dead letter without any river board.
having been constituted. Further, it was also argued that the parliamentary legislation under Article 262, the Interstate Water Disputes Act did not attract any entry in the union list. It essentially provided for the adjudication of river water dispute. Consequently the Karnataka legislature had legislative competence to promulgate the ordinance and it could not be inhibited by any interim orders of the Tribunal.

Karnataka’s further contention was that the 1956 Act envisaged only a final report on the dispute referred to the tribunal and on interim order based on ‘half backed’ information without full-fledged investigation did not form a report and decision under the Act while conceding the power to the Tribunal that certain kinds of interim orders processual in nature could be made for the purpose of effectuating the statutory purposes, no interim order affecting the existing rights of parties could be passed as it would make an inroad into the legislative powers of the state under entry 17. The state of Kerala had endorsed this view and contentions of Karnataka.

Tamil Nadu, however, contended that ordinarily dispute between different state would be resolved by the Supreme Court under article 131. But article 262 specifically empowered parliaments to enact a legislation for adjudication of water disputes and excluded the jurisdiction of the Supreme Court and other Courts. Similar exclusionary clause was found in section II of the Act. Therefore, as the water dispute tribunal was a substitute for
the Supreme Court in the adjudication of water dispute, and had all
the trappings of a civil court, it should have all the powers
including the power to grant interim relief.

On the question of legislative competence, Tamil Nadu’s
argument was that the ordinance was ultra vires the constitution
for reasons, (i) that the ordinance sought to violate the Act enacted
under Article 262. A state legislature had no power to legislate with
regard to a water dispute which might nullify the orders of a
Tribunal under a central law; (ii) the ordinance’s extra-territorial
application violated the rights of the people of Tamil Nadu to use
the Cauvery waters; (iii) the ordinance was contrary to the principle
of rule of law and basic concept of justice as a power not
comprehended under article 262 could not be read into the state
legislative power; and (iv) the ordinance violated the fundamental
rights of the people of Tamil Nadu under article 14 and 21 in that
Karnataka’s unilateral action was arbitrary and subversive of the
right to life of the populace of Tamil Nadu.

The Union Territory of Pondicherry broadly agreed with the
submissions of Tamil Nadu. In addition, it submitted that the
coriparian state had no ownership of proprietary right to the waters
except in the usufruct there of and the power to legislate under
entry 17 extended only to the usufructuary right subject to the
right of a riparian state to get the customary quantity of water.
On the issue of constitutional validity of the ordinance (question 7) the court entered upon an examination of the scope of Article 262, entries 17 and 56 and provisions of the Karnataka ordinance. The court noted that under the ordinance, Karnataka claimed absolute right to appropriate any quantity of Cauvery waters subject only to the requirement of protection and preservation of the irrigable areas of the state.

The court held that the Interstate Water Disputes Act, 1956 had been enacted under Article 262 and not under entry 56 as it provided for the machinery for adjudication of river water disputes. The court discounted the contention that "regulation and development" of interstate river waters did not deal with the "use, distribution or allocation" of such waters. The court observed: 101

Although it is possible technically to separate the "regulation and development" of the interstate river and river valley from the "use, distribution and allocation of its water" it is neither warranted nor necessary to do so.

The court cited the decision of the U.S. Supreme Court in State of Kansas V. State of Colorado 102 which laid down the rights of riparian states to the waters of interstate rivers. The riparian state had equality of right to the waters. No one state could appropriate the waters to the detriment of

101 Supra Note 92 at 1071
102 206 US 46 (1906)
other Co-riparian state. Each Co-riparian state was entitled to equitable appronitionment of waters which again would depend on the facts of each case.

Against the background of this principle and the relevent legal provisions, the court held the ordinance unconstitutional. The ordinance usurped the judicial power of the state by nullifying the effect of the interim order of the Tribunal. It affected the flow of the Cauvery waters into the territories of Tamil Nadu and Pondicherry, the lower riparian state. Being extra territorial in operation, it was beyond the legislative competence of the states and ultra vires Article 245 (i). Further, the court added. 103

"The ordinance is also against the basic tenents of the rule of law as the state of Karnataka has sought to take law in its own hand and to be above the law. Such an Act is an invitation to lawlessness and anarchy, in as much as the ordinance is a manifestation of a devise on the part of the state to be a judge in its own case and to defy the decision of the judicial authorities. The action forbodes evil consequences to the federal structure under the constitution and open doors for each state to act in the way it desires disregarding not only the right of the other state, the orders passed by instrumentalities constituted under an Act of parliament but also the provisions of the Constitution. If the power of a state

103 Special Reference No 1 of 1991, 2 Scale 1074.
to issue such an ordinance is upheld it will lead to the breakdown of the constitutional mechanism of the nation.”

The court held that questions 2 and 3 were interconnected and proceeded to give its opinion on question 3 first. Question 3 related to the power of the tribunal to grant interim relief. The court in its earlier decision had held that the central government had made a reference to the tribunal for consideration of the claim for interim relief as prayed for by Tamil Nadu and consequently the Tribunal had jurisdiction to consider the request as part of the reference itself. It virtually meant that when reference is made for interim relief as well, the Tribunal has the powers, though the court had left open the issue whether the Tribunal had incidental, ancillary or inherent power to grant interim relief when no reference for grant of such relief was made. The court negatived the contentions of Karnataka and Kerala to reconsider its decision on the earlier judgement. Explaining its reasons, the court said: 104

"We cannot countenance a situation whereby question 3 and for that matter question 1 and 2 may be so construed as to invite our opinion on the said decision of this court. That would obviously tantamount to our sitting in appeal on the said decision which it is impermissible for us to do even in adjudicatory jurisdiction. Nor is it competent for the president to invest it with

104 Id at 1075
an appellate jurisdiction over the said decision through a reference under Article 143.

Further, as the earlier decision was inter – parties, it operated as res judicata on the issue of granting of interim relief and could not be reopened."

The court found that in the background of the factual situation of the reference, it was not necessary to answer the question whether the tribunal had inherent powers to grant interim relief.

Question 2 was in respect of the specific order of the tribunal regulating the apportionment of Cauvery waters pending final adjudication. The contention that the Interstate water Disputes Act envisaged only a final report after a thorough investigation of the dispute and hence the tribunal’s interim order did not constitute a report was rejected by the court. The court, while conceding that investigation preceding on interim report could not be as exhaustive and thorough as that of the final report, held that the Tribunal could not be deprived of its power to pass interim orders when reference for such relief was made. Consequently an interim order of the Tribunal was a report under the statute and required to be published in order to make it effective and binding on the parties.

Thus, the apex court had short down the ordinance of the Karnataka Government which overrode the interim order of the Cauvery Water Dispute Tribunal. The ball had now been lobbed
into centre’s court and centre was in a dilemma to notify and not to notify and thus when the matter had reached a flash point, centre had very little option but to notify it and following the opinion expressed by the Supreme Court, the then Union Water Resources Minister Mr. V.C. Shukla made a suo motu statement on 12th December 1991 in the parliament stating that the Union Government had notified the interim order of the Cauvery Water Dispute Tribunal in the official Gazette though a review petition before the Tribunal by the Karnataka Government was pending before the Tribunal and the Tribunal decided 13th December 1991 for hearing the review petition.

Friday, 13th December, 1991 the day after Tribunal’s order was gazetted, the Karnataka Government protested by declaring an all party bandh and it took a furious turn. From being a controversy that was confined to court rooms and negotiating tables it spread violently on the streets. In a space of three days, the riots took over the 20 lives in Karnataka and destroyed property worth lakhs. Subsequently orgy of violence erupted mostly in the city’s western corridor, particularly in the industrial belt and spread over to Mysore, Mandya and Hassan district. The targets were mainly poor Tamils, whose huts were systematically burnt down. As a result there was a steady flow of Tamil from Bangalore back to their home state. In one week 5,000 to 6,000 of them, mostly

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construction workers and coolies had reached Tamil Nadu. About 1,00,000 people were violently uprooted.

Considering the gravity of the situation the Central Government invited the chief ministers of Tamil Nadu and Karnataka for talks to resolve the dispute but on 15th December, 1991 Tamil Nadu chief minister Jayalalitha refused to talk and demanded that the army be deployed to check violence against Tamils in Karnataka. An all party meeting in Karnataka legislators in Mandya in the first week of January had fixed February 19th as the deadline for the prime minister to initiate talks otherwise they had threatened to resign, a development which would have unsteadied Narashima Ray’s fragile Government.

It is against this background a meeting was held on 17th February, 1992 in New Delhi. But no breakthrough in the dispute over the sharing of the Cauvery was achieved as the meeting of the chief ministers of four riparian states of Tamil Nadu, Karnataka, Kerala and Pondicherry with the prime minister. Karnataka and Tamil Nadu was unwilling to change their stands over the interim award of the Cauvery Water Dispute Tribunal. It was an exercise in futality as Tamil Nadu chief minister remarked. Ms Jayalalitha took such rigid stand because she was already under pressure from the then opposition DMK and PMK which she admitted.

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106 P.V.V. Murthi, “Escape to misery”, Frontline, January 17, 1992, P.128
leaders of all the political parties in Tamil Nadu were of the unanimous opinion that there should be no compromise on the issue of the implementation of the interim order of the Tribunal.

Such statement on the part of Tamil Nadu chief minister revealed that she took a negative role at the February 17th New Delhi meeting which effectively ensured that the process of reconciliation and negotiation on the long drawn dispute ran aground even before it could be set in motion. Rather than establishing the areas of agreement as a starting point for a discussion of the more contentious issues—notably the interim order of the Cauvery waters Tribunal, she chose to emphasise first what was not negotiable, thus foreclosing all the options. Therefore, her attitude to the idea of talks and discussion as a method of problem solving had been both cynical and irresponsible. Cynical, because she treated the meeting merely as another forum to pronounce the sanctity of the interim order and its non-negotiability. And irresponsible because, as she herself said that Tamil Nadu will need water when the agricultural season starts in June; Karnataka had refused to release 205 TMC ft as ruled by the Tribunal. So, it is not use of force, which every shade of opinion will rule out, the only way Tamil Nadu farmers can get a share is by some kind of understanding that can be reached outside of, though supplementary to, the adjudicatory process. If the talks were an exercise in futality, as Jayalalitha said, she must hold herself responsible for it.
With the Jayalalitha, the then Prime Minister P.V. Narasima Rao and the then Chief Minister of Karnataka were equally responsible for the failure of Februray 17 meeting at New Delhi. Because of their personal political interest both of them played an inactive role. Without making much effort, the prime minister had made only the demand of Karnataka Congress (I) MP’s and MLA’s to initiate steps to find a solution to the Cauvery solution before February 19, 1992. Otherwise, they had threatened to resign from the minority government of Narasima Rao. On the otherhand, Bangarappa the then Chief Minister of Karnataka realised that maintenance of status quo in this round of talk would lead him to emerge as the moral victor. Therefore, it is equation of political power and the politics of dispute that led a routine collapse of New Delhi meeting at 17th February 1992. Any show of flexibility was condemned as a sellout of state interest. Meanwhile, Tamil Nadu went to the Supreme Court with an original suit seeking a direction to the Union Government to frame a scheme for effective implementation of the interim order.

In 1991 to 1994 storage levels in both the states, the South West monsoon which feeds the catchment areas in Karnataka, and the North East monsoon which supplements the river water for crops in Tamil Nadu were satisfactorily enough to keep the dispute quiescent. According to newspaper reports, as compared to the 205 tmc ft at Mettur ordered to be released to Tamil Nadu by the Tribunal, actual releases were 325 tmc ft, in 1991-92, 351 tmc ft in
1992-93, 223 tmc ft in 1993-94 and 396 tmc ft 1994-95. In 1995, however, the south West monsoon was late in coming during June-August with the result that the opening of the Mettur reservoir was delayed but there were good rains in September and as a whole, the South West monsoon turned out to be normal over the Cauvery basin. Faced with a cumulative deficit of 26.6 tmc ft, in June and July 1995, Tamil Nadu once again activated its petition to the Supreme Court in August to direct Karnataka to implement the Tribunal’s award but the matter rested there until early December when the Tamil Nadu Chief Minister wrote to the Karnataka chief minister to release 30 tmc ft to save standing crops in the delta– the long duration samba (August to January) and second Thaladi (October to February) crops. She also followed it up with seeking the Supreme Court to direct Karnataka to do so. This was precipitated by the fact that by this time the North East monsoon, which would have normally supplemented the river waters, proved to be substantially deficient in Tamil Nadu, of the order of 45 percent. Later in 14th December, 1995 the Supreme Court asked Tamil Nadu to approach the Tribunal when it applied before the Supreme Court. The Supreme Court declined to consider Tamil Nadu’s application as it deemed more appropriate that CWDT should consider it. The then chief Justice, Mr A.M. Ahmed, Mr Justice B.P.Jeevan Reddy and Mr Justice S.C.Sen also suggested that the chief ministers of Karnataka and Tamil Nadu should setup

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a small committee with experts to monitor release of water. The Supreme Court passed such order after hearing Mr. K. Parasaran for the state of Tamil Nadu and F.S. Nariman for the state of Karnataka and on being informed that the Tribunal (CWDT) is holding its sitting from today i,e., 14th December, 1995.

On the same day i,e., 14th December 1995, the Tamil Nadu Government moved an application before the Cauvery water Dispute Tribunal, seeking an interim direction to Karnataka Government to immediately release 30 tmc of Cauvery water to the state to save its standing samba. Along with this demand, the application had made two more prayers: (i) to declare that Karnataka cannot unilaterally decide that there are change of circumstances in this agricultural year to discharge it from the duty to release 205 tmc of water at Mattur as directed by the Tribunal in June, 1991, (ii) to declare that Karnataka is not entitled to claim a pro rata sharing on the alleged ground of distress mentioned in the April, 1992 order of the Tribunal. In its sitting on 14th December, 1995, Tribunal decided that the application would be heard on December 19, 1995.

The CWDT on 19th December, 1995 directed the Karnataka Government to “release forthwith” 11 tmc water to Tamil Nadu for an ad interim release of 30 tmc of water being the cumulative
deficit until mid December and to keep up further release of 14.4 tmc until the end of May.

Karnataka was not willing to do so. Tamil Nadu again moved the Supreme Court for a direction. On 28th December, 1995, the Supreme Court, at a special sitting requested the Prime Minister, Mr. P.V.Narasima Rao, to convene a meeting within two days between the Chief Ministers and opposition leaders of Tamil Nadu and Karnataka to reach a consensus on the release of Cauvery water. Mr. Justice K. Ramaswamy and Mr. Justice S.C. Agrawal were of the view that it was the appropriate procedure at this stage, instead of passing a judicial order directing the implementation of interim orders of Cauvery water Dispute Tribunal on December 19, 1995 for release of 11 tmc water to Tamil Nadu. The court also held that this order will be valid till the disposal of the suit, which had been postponed till February 6, 1996.

Such order of the Apex Court gave a new dimension to Judicial review in respect of river water dispute in India. In this case, Judicial review assumed a new role, quite unprecedented, when the Supreme Court directed the Chief Executive to engage in a political negotiation with a sense of urgency. But at the same time such kind of non-traditional exercise of the power of Judicial review treading the territory of the executive reserved in ISWD Act, 1956, generated a lot of controversies too. It was observed that the Supreme Court has no business conferring a power on the
Prime Minister that the law and the constitution do not give him. Critics held that the order of the court to constitute an expert team virtually affected the credit of the Tribunal when no one had pleaded that the Tribunal’s verdict was vitiated by mistake on the face of the record. Describing the move of the Court as improper, critics also held that court cannot say that a particular resolution or compromise formula be adopted and the Court itself cannot involve in political negotiations. The controversy was also on the point that the court is not an institution to initiate a political dialogue and it is a standing judicial principle that a court directive shall produce a definite result. Therefore, according to them, such an advisory, conciliatory, debatable policy move can never assume the status of a court verdict.

Despite such controversy, following Court verdict, after intensive discussion the Prime Minister requested Karnataka to release 6 tmc ft, which had been complied with by Karnataka and had appointed an expert team. The members of the team were Mr. Y.K. Alagh, vice chancellor of Jawaharlal Nehru University, Dr. Bharat Singh, former vice chancellor of Roorkee University and Mr. S.P. Charihan, retired Chief Engineer of Madhya Pradesh. Such step was merely a provisional measure and a part of good gesture by Karnataka Government to the request of Prime Minister. Karnataka was still adamant on its earlier stand. The then Karnataka chief

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minister, Mr H.D. Deve Gowda told in a press conference in June 4, 1996 that the state Government would soon file an application before the Cauvery Water Dispute Tribunal requesting it to postpone proceedings till the centre announced guidelines for the national water policy.

Karnataka reiterated her demand in subsequent meeting of the National Water Resource Council held on 6th February, 1996. Although the Chief Ministers of the two states used the forum of National Water Resource Council fully to propagate their point of view, but Karnataka went a step further and demanded that the meeting of CWDT not be held till the council ratified the policy guidelines on inter-state sharing of river waters. Here it is to be noted that the draft water policy was adopted at the previous meetings of the Water Resources Council in 1987, wherein it was decided to formulate guidelines under the policy. But it was neither discussed at length, nor put to vote. On the other hand, Tamil Nadu, in this meeting opposed and held that no executive guidelines could be so framed at this juncture as this could have the effect of interfering with the adjudicatory process pending before CWDT and the Supreme Court.

The bonhommie that prevailed soon after the installation of the United Front Government at the Centre, of which the Janata Dal and the DMK were partners, raised hopes that a solution was in sight. But meanwhile, an interesting development took place. The chairman of the CWDT Mr. Justice Chittotosh Mukerjee resigned
in June, 1996. The resignation as an event was first of its kind and created a lot of confusion regarding the existence and functioning of CWDT. A doubt arose whether a solution could be reached at all within the ambit of the interim award through negotiation. Tamil Nadu had to press very hard with the then Prime Minister Deve Gowda for the appointing of a new chairman. More than six months elapsed before Justice Mr. N.P.Sing was appointed to the post.

Next meeting was held in Madras on 5th August, 1996 between Tamil Nadu Chief Minister Mr M.Karunanidhi and his Karnataka counterpart, Mr J. H. Patel to find out an amicable solution for the implementation of interim award of CWDT. The meeting without producing any result decided to hold another dialogue very soon.

Similar to other previous talks under Supreme Court’s direction, another round of talks was held in Channi on 5th January, 1997. But this talks also failed because of differences over the percentage of water to be shared and the modalities of implementation of the interim award of the CWDT. Here Karnataka remained stick on its earlier stand that it will not be bound by the Tribunal’s interim award, nor is the state in favour of any adjudication by the Tribunal. Tamil Nadu Chief Minister on his part, was bent on approaching the Tribunal.
Subsequently, a Constitution Bench of five members which partly heard the Tamil Nadu’s suit in April 9, 1997 had suggested formulation of a scheme under section 6-A of ISWD Act, 1956 to implement the interim award of CWDT. The Attorney General gave an understanding before the Supreme Court that the Centre would be formulating the necessary scheme. In defence to this, the Union Government prepared a draft scheme and circulated it among Tamil Nadu, Pondicherry, Karnataka and Kerala on May 30, 1997. They were given six weeks to respond. Only Tamil Nadu and Pondicherry gave their views in time. The draft scheme provided for the creation of a Cauvery River Authority and a regulation committee to ensure the supply of 205 tmc ft of water in the Mettur reservoir during each water year and to see that Karnataka does not expand its area irrigated with the Cauvery Waters beyond 11.2 lakh acres. The Chief Secretaries of the states concerned and the Chairman of the Central Water Commission would be member. The Authority’s main function will be to ensure implementation of the provisions of the interim award of the CWDT. The authority will be given enough power so that it can be effective. The state Government will share the expenses in a proportion agreed upon mutually. Initially, Rs.50 Lakhs will be deposited by each state. The major arm of the Authority will be a regulation committee. In June, 1997 Tamil Nadu communicated to the centre that the scheme was by and large acceptable to it. But major political parties in Karnataka were up in arms against the centre’s draft scheme to form Cauvery River Authority. Karnataka
rejecting the interim award as “not implementable” wanted the centre to finalise guidelines for sharing inter-state river waters under the National water policy.

The Supreme Court in its another initiative suggested on August 20, 1997 that the Center should finalise the scheme and informed the court of the action it had taken and on 30th August, 1997, the Supreme Court had pointed out Karnataka and Kerala’s failure to reply and observed that if the “two Governments again fail to respond within two weeks. It will be construed that they have no objection whatsoever to the draft scheme”. Subsequently the states replied and their responses were considered and proper amendments carried out to the draft scheme at a meeting on 30th September, 1997. However the scheme was yet to be notified.

Tamil Nadu again in order to avoid delay in the implementation of the interim order and ensure finalisation and notification of the scheme requested to the then Prime Minister, Mr. I.K.Gujral, on five occasions between July and November 1997 for early action on the matter. Tamil Nadu pressed its stand on at a meeting called by the Union Water Resources Minister in September, 1997. At the meeting, Karnataka had agreed that instead of proposed Cauvery River Authority, an advisory or coordination committee would suffice. Countering this, Tamil Nadu said such a committee would not have statutory power and as the scheme was in order, it should be finalised immediately. In November, 1997 the then PWD Minister Mr. Durai Murugan met
the then Prime Minister and Water Resources Minister requesting them to take step on the matter. As the centre’s response was not satisfactory and it did not bother to notify the scheme, the Minister filed an affidavit before the Supreme Court pleading for the swift action of the Central Government to implement the scheme.

Chronological description of events related with the Cauvery Water dispute reveals that since April, 9, 1997 several things happened but nothing had been able to persuade Karnataka to implement the interim award in its Present form. At the same time, Centre had not issued the Gazette notification of the scheme under 6-A of the ISWD Act, 1956, even after its commitment in the Supreme Court. Meanwhile, the case had been posted for next hearing on July 21, 1998.

Expecting the move of the Centre to do something before 21st July, 1998, the date of hearing of the petition at the Supreme Court, Karnataka meanwhile decided to send an all party delegation led by the Chief Minister, Mr. J.H. Patel to wait on the Prime Minister on Cauvery issue. On the other hand, expecting, another request for adjournment by the centre on 21st July, 1998 before the Supreme Court, due to the pressure from Karnataka, Tamil Nadu Chief Minister on 12th July, 1998, urged M.P’s from Tamil Nadu and pondicherry to highlight in parliament the need for immediate implementatation of the interim award. The AIADMK leader Miss. J. Jaylalitha also urged the centre to notify the draft scheme before
the Supreme Court hearing on 21\textsuperscript{st} July, 1998 and threatened the Centre with diastrous consequences if it fails to notify.

Central Government was still unmoved and the scheme was not notified. Ultimately, the case came up before the Supreme Court on 21\textsuperscript{st} July, 1998. The three member Bench comp rising the then Chief Justice M. M Punchi, Mr. Justice K. P. Thomas and Mr. Justice S.S.M Quardi gave the center one more and the last chance till 12\textsuperscript{th} August, 1998, to draw up a scheme for implementing the interim award of the Cauvery Water Dispute Tribunal.

Compelled by the Supreme Court's directive Central Government convened a meeting of Karnataka and Tamil Nadu Chief Secretaries in New Delhi on 29\textsuperscript{th} July, 1998 for talks on Cauvery dispute. In the meeting centre suggested amendments scaling down the powers of the Cauvery Authority and making provisions for distress year. It planned to retain the water sharing formula proposed in the interim award. The modified draft scheme also proposed to have a Review Committee and a Regulation Committee besides the Authority. Review Committee was proposed to be headed by Union Water Resources Minister and could revoke any decision taken by the Authority. The modified draft scheme also had suggested that all members of the Review Committee should be present if any of the Authority’s decisions needed to be reviewed.
Meanwhile, the all party meeting convened by the Tamil Nadu Government on August 3rd, 1998 had authorised the Chief Minister Mr. M. Karunanidhi to attend another oncoming proposed meeting of the Prime Minister with riparian state on 6th August, 1998 to find out a solution for implementing interim award before 12th August, 1998. Similarly, on the eve of the Prime Minister’s meeting on 6th July, 1998 an all party meeting on 5th August, 1998 authorised the then Chief Minister J. H. Patel, to oppose any regulatory scheme for implementation of the Cauvery interim award.

In its next development, the Chief Minister of the four Cauvery basin states reached a broad agreement after nine hours of discussion spread over two days on 6th and 7th August 1998 under the chairmanship of Prime Minister Atal Bihari Vajpayee. The agreement contained four point understanding. These are (i) There Shall be a Cauvery Water Authority; (ii) This Authority shall frame rules for the conduct of business; (iii) Under this Authority, there shall be a monitoring committee of the designated officers of the Union and the four state Governments, and (iv) As there is no unanimity about the nature, role and functions of the monitoring committee, a drafting committee under the Chairmanship of the cabinet secretary shall look into the powers, duties, functions and the role of the monitoring Committee.\footnote{Sam Rajappa. ‘One bow too many’. The statesman, 30 August, 1998, Calcutta P.9}
The accord also stipulated that all states must agree to a decision before it is taken and even if one state dissents, the issue in question will be rejected.

Despite such broad agreement, due to the lack of consensus regarding the status and function of monitoring committee, the question of notification of interim award remained undecided. However, on next day i.e., on August, 8, 1998, when four riparian states arrived at a consensus on the role and functions of the monitoring committee, then the decks were cleared for implementation of the Cauvery interim award. It was decided that the monitoring committee though not to have any statutory power will assist the proposed Cauvery River Authority.

Next, the most important development was the Centre’s notification of a scheme on 11\textsuperscript{th} August, 1998 to implement the Cauvery Water Tribunal’s June, 1991 interim award, rejecting Miss Jayalalitha’s demand for acceptance of the 1997 original draft scheme.

The scheme titled “Cauvery Water (Implementation of the order of 1991 and all subsequent related orders of the Tribunal) scheme, 1998” was signed on 11\textsuperscript{th} August, 1998 by the Water Resources Secretary and Gazetted as statutory order 675 (E).\textsuperscript{113} With this, the centre had met the Supreme Court requirement of

framing a scheme for implementation of the seven-year-old interim order of the Tribunal before its next hearing on 12th August, 1998.

The scheme provides for the Constitution of a Cauvery River Authority with Prime Minister as its chairperson and the Chief Minister of Karnataka, Kerala, Tamil Nadu and Pondicherry as its members. An official Monitoring Committee shall assist the Authority. The Union Water Resources Secretary shall be the secretary of Authority, whose headquarters shall be in New Delhi. The Authority may convene meetings as and when necessary. The Authority shall frame rules and regulations for the conduct of its business.

The Monitoring committee shall have Union Water Resources Secretarty, as its chairman and chief secretaries, designated officers of the four states and the Central Water Commision Chairman as members. The Chief Engineer of the Central Water Commision shall be its member secretary. The role of the Monitoring Committee will be to render assistance to the Authority to enable it to take decisions on issues under consideration. The Monitoring Committee shall assist the Authority in collecting information and data. It shall assist in monitoring the implementation of the decision of the Authority. In case any difficulty arises in implementation, the Monitoring Committee shall report the position to the Authority.
The Monitoring Committee shall also assist the Authority in setting up a well-designed 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. The Committee shall meet at least once in three months, but may meet as often as necessary.

The notification says that all capital and revenue expenditure required to be incurred by the Authority shall be borne by the Central Government initially till the issue of sharing of cost among the party states and the Union Territory was either decided by them through mutual discussions or till the Tribunal took a decision in the matter.

A day after the notification of the Scheme to implement interim award of CWDT, on 12th August, three Judge Constitution Bench comprising the Chief Justice, Mr. M.M. Punchi, Mr. Justice A.P. Mishra, and Mr. Justice S.C. Agrawal gave a directive for reference to a five-Judge Constitution Bench, for determination of the question of survival of the Tamil Nadu suit for notification of Cauvery Tribunal’s 1991 interim award and finally on 17th August 1998, five member Constitution Bench, headed by the Chief Justice, disposed of the petition without passing an order after Tamil Nadu’s counsel said he had no objection because the centre had already notified the scheme on 11th August, 1998. With the disposal of the petition two questions framed by Constitution
Bench on 3rd April, 1997, namely, whether centre was obliged to enforce the Tribunal’s decision in view of section 6 of ISWD Act and if the Supreme Court was precluded from making any direction to the centre on this, also had become infructuous now. The broad agreement reached at the Chief Minister’s meeting was nodoubt a good achievement towards the temporary settlement of the Cauvery Water dispute. The agreement can claim some sort of uniqueness so far the dispute settlement machinery is concerned. Through this agreement, for the first time, a political dispute settlement authority i.e., Cauvery River Authority is established. Such authority is devoid of any representative body of bureaucrats and technocrats. The Authority is fully dominated by high level political executive both national and state sphere like Prime Minister and Chief Ministers. On the other hand, Monitoring Committee setup by the agreement is a non-statutory body and its role is confined to such routine areas as data collection and setting up a well designed hydro metrological network in the basin114.

Such a structural devise was intentionally adopted to facilitate a flexible and non-coercive decision making system. But the critic have argued that due to pre-occupation of politicians and lack of initiative of the Prime Minister quick decision making may not be possible. They have alos argued that where the very disputant have been given the power to veto any decision, there,

one cannot expect quick decision, rather it is bound to be self defeating.

But in few other respect, the agreement can claim credit. Under this agreement, from its total rejection of interim award, Karnataka had for the first time committed itself to release 205 tmc ft to the Mettur reservoir in a water years. Also, this agreement which is by nature a political negotiation, for the first time got a judicial approval and legal sanction.

In the light of the present development of the Cauvery water dispute, it would however, be extremely fallacious to infer that a model modus operandi has been established to implement interim award. The real test of the Authority, whose scope is restricted to the implementation of the Tribunal’s interim order, will come when monsoons fail and it is called upon to apportion the diminished water flows equitably. It is also to be noted that despite repeated demand of the Karnataka Government, Centre has not yet framed National Water Policy and at the same time it is also to be noted that, Cauvery Water Dispute Tribunal has not given its final award. Therefore, solution through agreement reached at the Chief Minister’s meeting on 6th and 7th August 1998 at New Delhi, is purely adhoc solution applicable only to interim order. Cauvery river authority would become invalid once the CWDT gave its final order. So, now, what is required is to expedite the process of giving final award of the Tribunal and to adopt a comprehensive National Water Policy.
From the discussion of the origin, nature and recent development of Cauvery water dispute, it may be summed up that it is a kind of dispute which still awaits solution and by nature it is a kind of fully appropriated river basin, where the water is fully appropriated usually by the lower basin state having a flat terrain and dispute arise out of the irrigation demands of the basin state which has a mountainous and undulating terrain. Another thing which is prominently manifested in the courses of recent development of the dispute is that political elements rather than legal elements dominate the dispute and, therefore, it appears that negotiation may be the most effective method and can help a lot to the quasi judicial method for quick settlement of such a dispute. Present development of the dispute also highlights the need of a national water policy as a pre-condition for effective solution of the dispute.