CHAPTER - IX

WATER DISPUTES

Introduction

The major rivers of India are almost all inter-State rivers. Most of these rivers drain more than one State. Therefore, the waters of such rivers are to be shared by all the riparian States. In recent times, the question of allocation of the river waters among the various riparian States has been engaging the attention of the State Governments and the Central Government. But the inter-State boundaries have undergone far-reaching changes during the past three decades. Under the Andhra State Act 1953, the composite State of Madras was split into Andhra State and Madras State. In 1956, as a result of the reorganisation of States, some parts of Old Hyderabad State were split and merged with Andhra Pradesh, Karnataka and Bombay States. From 1st November 1956, Andhra State came to be called Andhra Pradesh. A few years later, that is, on 1st May 1960, the Bilingual State of Bombay was bifurcated into Maharashtra and Gujarat. There have been several minor adjustments in territorial boundaries by different Acts of Parliament. In contrast to the changing political
boundaries, rivers have continued to flow in their natural channels, unmindful of man-made changes in the inter-State boundaries. In this connection, the observations of the Second Irrigation Commission are quite pertinent. The Commission was set up by Government of India on 1st April 1969. The Commission submitted its report to the Union Government on 30th March 1972. According to the Commission, "An inter-State river is one which flows through more than one State or which forms the boundary between two or more States. In questions relating to the sharing or utilisation of the waters of inter-State rivers, the concept of a river valley or river basin which embraces the main river and all its tributaries and includes the catchment of the main river and its tributaries has to be borne in mind."(1)

Fundamental Reasons for Conflict

The conflicts are bound to arise since the rivers are flowing through more than one State. There are certain fundamental reasons for conflicts. In all river basins, there is a natural division between the upper basin where the main river and its tributaries are born and the lower basin through which the river finds its way into the sea. If the total volume of water available in the river system
is enough to satisfy the present and future needs of the various parts of the river basin, the question of sharing waters presents little difficulty. In the report of the Second Irrigation Commission it is observed, "However, as often happens, if the volume of water in the river system is insufficient to satisfy the needs of various parts of the basin, there is likely to be a dispute. The lower riparians, naturally, wish to preserve and protect their right to continue withdrawals at the rate to which they are accustomed by usage and claim the benefit of the juridical principle of priority of appropriations. The upper riparians, just as naturally, seek the endorsement of another juridical principle, that of equitable distribution even if this means less withdrawal by the lower riparians and they resist any claim which tends to retard or to inhibit their own development or curtails their use of water."(2) It is this situation which frequently lies at the root of inter-State river water disputes. In India, most of the States have realised the importance of river waters with their potential as sources of irrigation and power on account of rapid development in irrigation agriculture. Conflicts of interest in respect of inter-State rivers are quite normal to co-riparian states in India. They are not the recent
phenomena. Disputes relating to the waters of inter-State rivers had arisen long before the enforcement of the Government of India Act 1935. The best example is the dispute as to the sharing of Cauvery waters which arose between Madras and Old Mysore Princely State as far as back 1892. The dispute has again flared up between the successor States of Tamil Nadu, Karnataka and Kerala.

There are several issues which centre round the inter-State water disputes which have arisen so far. The report of the Second Irrigation Commission has listed the following issues which involve the inter-State river water disputes:

(a) The sharing of the waters of an inter-State river. The dispute between Karnataka, Andhra Pradesh and Maharashtra relating to the Krishna, that between Andhra Pradesh, Maharashtra, Karnataka, Orissa and Madhya Pradesh relating to the Godavari and between Madhya Pradesh, Maharashtra and Gujarat relating to the Narmada are some examples.

(b) The apportionment of costs and benefits of a joint venture of two or more States. On this issue, there are disputes between Bihar and Uttar Pradesh relating to
the Musakhand dam and between Andhra Pradesh and Karnataka relating to the Tungabhadra.

(c) The compensation payable to a State (usually an upper riparian State) which suffers damage through the implementation of a project undertaken by another (usually a lower riparian State). The compensation includes the cost of acquiring land on which to resettle those whose lands are submerged or otherwise damaged and the other rehabilitation costs involved in such resettlements. The question of compensation loomed large in the Enakro–Nangal Project on the Satlej and the Pong Project on the Beas. In both cases land in Himachal Pradesh was to be submerged. It is one of the major issues involved in the current dispute between Madhya Pradesh and Gujarat relating to the Karmada because the construction of a dam at Navagaon will submerge areas in Madhya Pradesh.

(d) The interpretation of an agreement or of the terms of an award: The Cauvery dispute between Karnataka and Tamil Nadu is one such case. According to an agreement arrived at in 1924 between the former Princely State of Mysore and the then Province of Madras, Old Mysore was entitled to extend irrigation to the limit of 45,000 hectares by means of reservoirs on the Cauvery and its
tributaries, with an effective capacity of 1274 m.cu.m. The Madras Government was to limit the extension of irrigation under the Mettur Project to 122,000 hectares with the capacity of the Mettur dam at 2,648 m.cu.m. The dispute between the States arose out of the interpretation of the agreement, as to what each State was permitted to construct on the rivers of the basin to further the development of its irrigation.

(e) Complaints relating to excess withdrawal of water: One of the issues raised in the current dispute between Maharashtra, Karnataka and Andhra Pradesh relating to the Krishna is that of alleged withdrawals by the States in excess of the interim reallocation of water made by the Union Government pending final allocation. Maharashtra has been accused of an excess withdrawal of water from the Krishna at Koyana, for the hydroelectric project and for other irrigation schemes.

History of Legislation Dealing with Inter-State River Water Disputes

During the early years of British rule and until the enforcement of the Government of India Act of 1919, irrigation works in India were under the control of the
Government of India. It was the responsibility of the provincial Government to execute and manage the irrigation works. But the sanction(5) of the Secretary of State was required for all irrigation projects. With the enforcement of the above Act in 1921, irrigation became a reserved(6) subject of the provincial Governments. But the prior approval of the Secretary of State for India was necessary for all the major irrigation works and the projects on inter-State rivers. When the Government of India Act of 1935 was passed, irrigation became a provincial subject under the charge of Minister and wholly within the legislative competence of the province. Nevertheless, the Government of India had the responsibility of settling the inter-State disputes. They were settled by the Governor General who was empowered(7) to appoint a commission consisting of persons having special knowledge and experience in irrigation engineering, administration, finance or law to make recommendations on the basis of which a decision could be taken.

Present Position under the Constitution and Law

The Constitution of Independent India has continued to observe the division of responsibility with regard to
irrigation. With regard to inter-State rivers Article 262 of the Constitution empowers Parliament to make laws for the adjudication of disputes. It reads as follows:

1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley. Parliament has also been given the power to pass a law barring the jurisdiction of the courts by clause (2) of the Article, which reads as follows:

2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1). By virtue of powers vested in Parliament under Article 262, it enacted the inter-State Water Disputes Act 1956. This Act provides for the adjudication of the disputes as described in Article 262 and sets out the conditions under which such a dispute can arise. The Parliament is empowered to enact laws under Entry 56 of the First List to the Seventh Schedule which reads as follows:

"Regulation and development of inter-State rivers
and river valleys to the extent to which such regula-
tion and development under the control of the Union 
is declared by Parliament by law to be expedient in the 
public interest. (10) Similarly under Entry 17 of the 
Second List to the Seventh Schedule, the State can 
exercise authority over 'water' that is to say, water 
supplies, it can undertake irrigation works, construct 
canals, drainages and embankments, it can store water and 
generate water - all these subject to the provisions of 
Entry 56 of the First List. In exercise of the powers 
under Entry 56, the Parliament enacted the River Boards 
Act of 1956 which authorises the Union Government - "to 
establish a River Board for advising the Governments 
interested, in relation to such matters concerning the 
regulation or development of an inter-State river or 
river valley or any specific part thereof and for perform-
ing such other functions as may be specified in the 
notification." (11)

The Central Government has set up so far only three 
tribunals to adjudicate the inter-State river water 
disputes. They are:

1) The dispute relating to the sharing of Krishna 
waters between Maharashtra, Karnataka and Andhra Pradesh.
ii) The dispute relating to the sharing of Godavari waters between Madhya Pradesh, Maharashtra, Karnataka, Andhra Pradesh and Orissa; and

iii) The Narmada Water Dispute between Madhya Pradesh, Rajasthan, Gujarat and Maharashtra.

Similarly the main objective of the River Boards Act of 1956 is to make suitable provision for resolving the conflicts among State Governments and for achieving optimum utilisation of the water resources of inter-State rivers. The Act has remained a dead letter. There are several objections against the River Boards. They are the following:

1) The River Boards are too expensive.

ii) Their role is only advisory.

iii) The State Governments may ignore the advice of the River Boards if it is politically expedient.

The Central Government has not so far availed of the authority given to it under the River Boards Act and no River Board has yet been set up.

The Report of the States' Reorganisation Commission also deals with inter-State agreements, river-valleys
Para 830: "A number of inter-State agreements regarding the allocation of water rights have been concluded or finalised recently. On the reorganisation of States, some of these agreements may require to be changed. In the case of the Krishna and the Godavari and the Bhakra-Nangal projects for example, the State Governments concerned have now arrived at partial or complete agreements, or, similar agreements have been reached or are likely to be reached, regarding the allocation of the cost and benefits of the Bhakra project and the utilisation of the Periar waters for the production of power. In other cases, as in the Cauvery in the South, there are subsisting awards or agreements which go back such many years. If / agreements are devised to adopt them to the needs of the newly constituted States quickly some degree of confusion is likely to be caused. Provision for such adaptation may have to be made in the legislation to be enacted under the Articles 3 and 4, either by specifying the rights and obligations of the prospective States or by empowering the Central Government to make the necessary adaptation in consultation with the State Governments concerned."
Para 331: "In the course of our enquiry we have come across a number of cases in which claims were preferred for the transfer of particular areas on the ground that control over the catchment area of a river or over the dam site or the benefit area was necessary. We have not attached too much importance to these suggestions, for the reason partly that legislation which has already been introduced in Parliament makes specific provision for the regulation and development of inter-State rivers."

Similarly under the States' Reorganisation Act 1956, the Central Government is the authority to give directions to the State Governments in respect of inter-State rivers. Section 108 of the States' Reorganisation Act provides: "Any agreement or arrangements entered into between the Central Government and one or more existing States or between two or more existing States, the Central Government may from time to time give such directions as may appear to it to be necessary for the due completion of the project and for its administration, maintenance and operation thereafter."(13)

No direction has been issued by the Central Government
under the provision of this Act. Hence neither the Constitution nor the two principal Acts of Parliament relating to inter-State rivers - the River Boards Act 1956 and the Inter-State Water Dispute Act 1956 lay down the basic principles which should govern relative rights of basin States on the waters of an inter-State river other than the quality of basin States. But there are certain well-settled principles of inter-State rivers. They are discussed below:

**Apportionment of Waters**

There are four different ways in which the waters of an inter-State river can be apportioned among the co-riparians. They are the following:

1) Of these, first is that each State has for its people the quantity afforded by nature. Under this principle, an upper State upon an inter-State stream would keep for itself all the waters contributed by that State to the stream. Likewise the lower State would have a right to all the waters flowing to, arising within that State as a result of natural causes.

2) By virtue of its sovereignty or partial sovereignty, a State has a right to all the waters arising within the boundaries whether supplying an inter-State stream or not.
3) The third principle is that the waters of an inter-State stream to be divided between the States for the benefit of their respective people simply on the basis of what is fair and equitable without emphasizing the relative dates of use. This is known as riparian system.

4) A fourth and the last conception is that the waters of an inter-State stream to be divided among the various water users, in order of their seniority respecting the date of appropriation. This is called the doctrine of prior appropriation.

There are three major inter-State rivers in which Karnataka is interested. The one in the south is the Cauvery and its tributaries. The other two rivers are Krishna and Godavari.

The Cauvery

The River Cauvery is the oldest among the rivers of the Indian sub-continent. Cauvery is one of the sacred rivers of south India. It is the life line of the south. Cauvery is as sacred as the river Ganges in the north and hence she is known as Dakshina Ganga. One of the main sources of water-supply in the States of
Kerala, Karnataka and Tamil Nadu is the river Cauvery and its numerous tributaries. In Karnataka, the Cauvery basin includes the entire districts of Mysore and Mandya, about three-quarters of Hassan, about two-thirds each of Bangalore and Coorg districts and parts of Tumkur and Chickmagalur. In Kerala the basin covers small parts of four districts - Cannanore, Kozikode, Iddikki and Palghat. In Tamil Nadu, the basin extends over about three quarters each of three districts - Coimbatore and Tanjore, about two-thirds each of Tiruchirappalli and Salem and includes small parts of Dharmapuri, Madurai and South Arcot districts. (See Basin Map of Cauvery - Map No. 9.). The River has its source on the Brahmagiri (Western Ghat) in Coorg District of Karnataka State. The source of the river is known as Talakaveri. This river is called darling daughter of Coorg. The total length of the river is 475 miles. Travercing through the States of Karnataka, Kerala and Tamil Nadu, the river falls into the Bay of Bengal. The total catchment area of the Cauvery basin is about 32,000 square miles, distributed as follows.

<table>
<thead>
<tr>
<th>State</th>
<th>Area, square miles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kerala</td>
<td>1,100</td>
</tr>
<tr>
<td>Karnataka</td>
<td>13,300</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>18,100</td>
</tr>
<tr>
<td>Pondicherry</td>
<td>100</td>
</tr>
</tbody>
</table>
The contribution of each State to the river basin is estimated to be as follows:

Kerala: 135 T.M.C. (18.25%)
Karnataka: 388 T.M.C. (52.5%)
Tamil Nadu: 217 T.M.C. (29.25%)

Total: 740 T.M.C. (100.0%)

The Agreement of 1892

The Princely State of Old Mysore and the subsequent administrations failed to take timely action to improve the irrigation system in the regions of Old Mysore area. The vast patches of land in the districts of Hassan, Coorg, Mysore and Mandyava were left to depend upon the monsoon for their agricultural operations. The Reorganised State of Karnataka has woken up late to the realities of the situation. The old Agreement of 1924 has become an obstacle, and it is facing numerous hurdles in rendering justice to the peasants of Karnataka. The origin of the present dispute could be traced back to 1892 Agreement reached between the Princely State of Old Mysore and erstwhile Madras Presidency. The then Princely State of Mysore wanted to construct irrigation projects on the Cauvery river and
the Government of then Madras Presidency raised objections. Prof. Basheer Hussain in his illuminating book on Cauvery Water Dispute observes:

"The basis of the Madras Government's objection was that the Madras farmers had acquired casementary rights over the Cauvery waters by prescription from the pre-Christian era of the Cholans who had built an excellent irrigation system in the Tanjore Delta." (18)

The then Dewan of Mysore, Mr. K. Sheshadri Iyer, in his letter No. I A of 10th June 1890 submitted to the Resident a Memorandum (19) on the subject of the restoration and construction of irrigation works in Mysore, the right to effect which without restriction had been disputed by the Madras Government. He had urged the Resident to represent the matter in full to the Government of India and seek settlement of the issue. But at the conference held at Ootacamund on 22nd May 1891 between the officers of two Governments, it was mutually agreed: "The proposal of Mysore to consider each individual stream or catchment area, separately on its own merits, would be a more suitable method of arriving at an arrangement whereby Madras and Mysore interests should be protected." (20) The Draft of the Rules and
Schedules agreed at the conference in connection with the restoration and construction of Irrigation Works at Mysore was accepted by both the Governments and the agreement came into force with effect from 18th February 1892. This agreement consists of six Rules and three Schedules. Rules II and III are the two important provisions of the agreement and the text of the Rules reads as follows:

Rule II - The Mysore Government, shall not without the previous consent of the Madras Government or before a decision under Rule 4 below, build (a) any "New Irrigation Reservoirs" across any part of the thirteen main rivers named in the Appended Schedule A, or across any stream named in Schedule B below the point specified in column 5 of the said Schedule B or in any drainage area specified in the Schedule B or (b) any "New Anicut" across the minor streams of Schedule A viz 4 to 9 and 14 and 15 or across any of the streams of Schedule B or across the following major streams of Schedule A, lower than the points specified thereunder:

Across 1. Tungabhadra - lower than the road crossing at Hunsalli.

Across 10. Cauvery - lower than the Ranaswami Anikat.
Rule III - When the Mysore Government desires to construct any "New Irrigation Reservoir" or any "new anicut" requiring the previous consent of the Madras Government under the last preceding rule, then, full information regarding the proposed work shall be forwarded to the Madras Government and the consent of that Government shall be obtained previous to the actual commencement of work. The Madras Government shall be bound not to refuse such consent except for the protection of prescriptive right already acquired and actually existing, the existence, extent and nature of such right and the mode of exercising it being in every case determined in accordance with the law on the subject of prescriptive right to use of water and in accordance with what is fair and reasonable under all the circumstances of each individual case.\(^{(21)}\)

The Agreement of 1892 is entitled as "Rules Defining the Limits with which no New Irrigation Works are to be constructed by the Mysore State without previous Reference to the Madras Government." The title of the Agreement suggests that it imposed several restrictions
on Mysore without any corresponding obligation on
Madras. It has all the features of a dictated Agreement.
The Madras, a lower riparian State, was given a veto
power over all the irrigation works of Mysore, and upper
 riparian State. Mysore had to enter into an unequal
Agreement with Madras. The reason for this is quite
simple. Mysore was a dependent princely State
controlled by a British Resident. But Madras Presidency
was administered by a Governor, who was only next to
the Governor General. Mysore was forced to accept
the Agreement.

In the meanwhile, Sir, M.V.Visveswarayya, the most
distinguished engineer became the Chief Engineer of
Mysore in 1909 and later he became the Dewan of Mysore
in 1912. He proposed to build a reservoir at Kannambadi
(Krishnarajasagar) of a capacity of 41,500 million cubic
feet. But this was objected by Madras Government and
it refused to give its consent. Therefore, the Government
of India referred the matter at issue to arbitration
under Clause IV of the 1892 Agreement. Sir H.D.Griffin
and Sir M.Nethersole Inspector-General of Irrigation
were appointed(22) as Arbitrator and Assessor
respectively in 1913.
The Award of the Arbitration

The Award of the Arbitrator was finally delivered on 12th May 1914. The following is the extract from the text of the Award:

"Subject therefore to the due observance of the Award, I am of opinion that the construction and working of the Kannambadi Reservoir will not necessarily interfere with the prescriptive rights of Madras and I award accordingly. On the broad question involved in this appeal to the arbitration, I am of opinion that subject as above to the due observance of the Award and to the supply by Mysore of the information required as to the stability etc; of the reservoir, sanction should be accorded to the Mysore Project. In conclusion, I regret that it has been impossible to arrive at a settlement satisfactory to both parties. Each party sets out claims which on examination were found inadmissible in whole or in part. The claims of Madras, if allowed, would probably have resulted in making the Mysore Project impossible; those of Mysore, in seriously impairing the interest of Madras. Throughout the proceedings, there has been a regrettable lack of the spirit of compromise. The resolution we have arrived at, recognises the paramount importance of the existing Madras interests,
has for its primary object the safeguarding of those interests and does, we believe, safeguard them effectively. At the same time, it gives to Mysore the opportunity of utilising for their own benefit their fair share of the surplus waters of the Cauvery.\(^{(23)}\)

The Government of India ratified the above award. But the Government of Madras appealed to the Secretary of State for India on the ground that the Award afforded inadequate protection to Madras in respect of the surplus waters of the river and of future extensions of irrigation. Thereupon, the Secretary of State for India suspended the Award. The British Government persuaded the Mysore Government to reopen fresh negotiations with the Government of Madras and to arrive at an amicable settlement. But during the subsequent negotiations, Mysore claimed the right to impose limitations on extension of reservoirs in Madras. The Government of Madras was not prepared to accept these limitations. The consulting Engineer to the Government of India extended his assistance during the discussion. The Chief Engineers of Madras and Mysore agreed, on 26th July 1921 to a set of Rules of Regulations\(^{(24)}\) of the Krishna-rajagopa Reservoir under construction on the Cauvery.
in the Mysore territory. Consequently the agreement of February 18, 1924 was signed by the two Governments.

1924 Agreement

The Agreement is entitled as "Final Agreement between the Mysore and the Madras Governments in Regard to the Construction of a Dam and a Reservoir at Krishnarajasagara." Mr. N. D. Gulhati, an eminent expert on irrigation engineering, in his book on Development of inter-State Rivers, observes, "It will be seen that the 1924 Agreement was in the nature of follow-up action on the original 1892 Agreement, the validity of which continued to survive. In brief, Madras gave its assent, under Clause III of the 1892 Agreement, to Mysore constructing its Krishnarajasagara Project, apart from getting its prescriptive rights in respect of irrigation in the delta evaluated and the conserved, Madras secured the right to construct its Mettur Project; both Madras and Mysore obtained additional rights to extend irrigation to new areas."(25)

Some aspects of the Rules of Regulation which formed part of the Agreement were subsequently changed in 1929.

The 1924 Agreement has many objectionable features which have caused serious injuries to the interests of our State. The Agreement of 1924 consists of ten Articles.
The first nine of these comprise a narration of the events starting with the 1892 Agreement and the subsequent events. Article 10 sets out the new terms and conditions agreed upon in 1924. It consists of 15 Clauses. The important provisions of Articles 10 are reproduced below from the text of the Agreement.

"Clause (1) The Mysore Government shall be entitled to construct and the Madras Government do hereby assent under Clause III of the 1892 Agreement to the Mysore Government constructing a dam and a reservoir across and on the river Cauvery at Kannambadi, now known as the Krishnarajasagara, such dam and reservoir to be of a storage capacity of not higher than 112 feet above the sill of the under-sluices now in existence corresponding to 124 feet above bed of the river before construction of the dam and to be of the effective capacity of 44,827 m.c.ft. measured from the sill of the irrigation sluices constructed at 60 feet level above the bed of the river, up to the maximum height of 124 feet above the bed of the river, the level of the bed of the river before the construction of the reservoir being taken as 12 feet below the sill level of the existing under-sluices; and such dam and reservoir to be in all respects.
IV) The Mysore Government on their part shall be at liberty to carry out future extensions of irrigation in Mysore under the Cauvery and its tributaries to an extent now fixed at 110,000 acres. This extent of new irrigation of 110,000 acres shall be in addition to and irrespective of the extent of irrigation permissible under the Rules of Regulation viz: 125,000 acres plus the extension permissible under each of the existing channels to the extent of one third of the area actually irrigated under such channel in or prior to 1910.

V) The Madras Government on their part agree to limit the new area of irrigation under their Cauvery-Mettur Project to 301,000 acres and the capacity of the new reservoir at Mettur, above the lowest irrigation sluice to ninety-three thousand five hundred million cubic feet.

VII) The Mysore Government on their part agree that extensions of irrigation in Mysore as specified in Clause (IV) above shall be carried out only by means of reservoirs constructed on the Cauvery and its tributaries. Such reservoirs may be of an effective capacity of 45,000 m.c.f.t. in the aggregate and the impounding therein shall be so regulated as not to make any material diminution
in supplies connoted by the gauges accepted in the Rules of Regulation for the Krishnarajasagara.

XI) The Mysore Government and the Madras Government further agree that the limitations and the arrangements embodied in the Clauses, shall, at the expiry of fifty years from the date of the execution of these presents be opened to reconsideration 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 Governments and to such modifications and additions as may be mutually agreed upon as the result of such reconsideration.

XII) The Madras Government and the Mysore Government further agree that the limits of the extension of irrigation specified in Clauses (iv) and (v) above, shall not preclude extension of irrigation effected solely by improvement of duty, without any increase of the quantity of water used.

XIII) Nothing herein agreed to or contained shall be deemed to qualify or limit in any manner the operation of the 1892 Agreement in regard to matters other than those to which this Agreement relates or to affect the
rights of the Mysore Government to construct new irrigation works on the tributaries of the Cauvery in Mysore.

XIV) The Madras Government shall be at liberty to construct new irrigation works on the tributaries of the Cauvery in Madras and should the Madras Government construct, on the Thamami, Amavati or Boyil rivers in Madras, any new storage reservoir, the Mysore Government shall be at liberty to construct, as an offset, a storage reservoir, in addition to those referred to in this Agreement on one of the tributaries of the Cauvery in Mysore of a capacity not exceeding 60 percent of the new reservoir in Madras. Provided that the impounding in such reservoirs shall not diminish or affect in any way the supplies to which the Madras Government and the Mysore Government respectively are entitled under this Agreement, or the division of surplus water which, it is anticipated, will be available for division on the termination of this Agreement as provided in Clause (XI). (26) The pith and substance of the above Agreement may be summarised as follows:

According to 1924 Agreement, Mysore was allowed to go ahead with its Krishnarajasagar project to impound
44.8 T.M.C. feet water and irrigate 1.25 lakh acres. A
prescribed "limit flow" at the upper anicut at Tanjore
was guaranteed. Madras could proceed with its Kettur Dam
to impound 93 T.M.C. feet water and to irrigate 3.01
lakh acres. There were other Clauses in the Agreement
that sought to maintain a balance between Madras and
Mysore if new reservoirs were constructed.

Defects of 1924 Agreement

The 1924 Agreement has many objectionable matters
which have caused serious injuries to the interest of
Karnataka. The following are the contentions of the
Karnataka:

1) Tamil Nadu had ten times the irrigated area
of Karnataka even before the Agreement of 1924 was
signed. The present needs of Karnataka are much greater
than Tamil Nadu.

2) Tamil Nadu has violated the 1924 Agreement by
building new irrigation works on the main river instead
of on its tributaries.

3) When the 1924 Agreement was signed, figures
relating to quantities of water to be impounded...
were based on assumptions but not on verified data.

4) Gauging was started subsequent to the 1924 Agreement at all key points. The observations made over the past several years clearly prove that the assumptions and presumptions made at the time of the Agreement are wrong.

5) The rich Cauvery flows through the territory of Karnataka for about 150 miles long but its benefits have not accrued to the inhabitants on either banks all these years.

6) Karnataka agreed by the terms of 1924 Agreement to impound 45,000 million cubic feet of water. At the same time, according to the Rules of Regulations, Karnataka agreed to discharge certain quantities of water from the Krishnarajasagara. Karnataka now feels that if it were to impound 45,000 million cubic feet of water, it will not be able to discharge the agreed quantity of water from Krishnarajasagara.

7) Karnataka is no longer a native State under the British Suserainty with a British Resident. It is
now a full-fledged constituent unit of the Indian Federation standing on a footing of equality with the State of Tamil Nadu.

8) The Agreement was reached between the riparian States of then Princely State of Old Mysore and then Madras Presidency. Now there has been a change in the circumstances resulting from the reorganisation of States involving territorial changes.

9) The upper portions of some of the tributaries like Kabini have come to lie in the State of Kerala. Hence Kerala has emerged as an affected party in the sharing of waters.

10) When the 1924 Agreement was signed, Coorg was a separate administrative unit. Does not its inclusion in Karnataka entitle the State now to a greater share of the Gauvery waters? Coorg was not a party to the Agreement at all though the river originates in Coorg.

The views of Tamil Nadu

Thus, according to Karnataka, the above mentioned irreconcilable inconsistencies are found in the 1924
Agreement. But Tamil Nadu is advancing quite different arguments in support of the 1924 Agreement. The following are the contentions of Tamil Nadu:

1) They are advancing the doctrine of "Prior Appropriation" in support of their claim.

2) They are raising objections to the construction of reservoir by Karnataka over three scheduled rivers - Hemavati, Kabini and Survarnavati and one non-scheduled river Harangi - all tributaries of the Cauvery.

Thus both the States are holding quite opposite views over the issue. But the arguments of Tamil Nadu can be rebutted on the following grounds:

1) Regarding the first contention of Tamil Nadu, it may be said that they are harping upon the out dated proscriptive rights. But this doctrine of prior appropriation is based upon the customary practice. According to this doctrine, the first appropriator of the water of a stream gets a right to continue appropriation to the same extent irrespective of hardship and inconvenience to the other riparians. Tamil Nadu claims that it must be continued to enjoy the same rights which it was enjoying during the times of the Chola Kings.
Prof. Basheer Hussain, in his thought-provoking book on Cauvery water dispute has reviewed the dispute in the light of the legal opinions expressed by eminent jurists on inter-State rivers in the various countries of the world.

The two most important cases quoted by Prof. Basheer Hussain may be referred here:

A) "Two distinct systems of water law are known to the people of the United States. First riparian; second the priority or appropriation. A water-right, under either system, is not ownership of the water itself as it exists in the natural sources of supply but rather of a right to make use of the water. The property is in the usufruct, not in the water or corpus itself and under either system, the right is an incorporeal hereditament. Although the rights under two systems are alike in these respects, there are others in which, there is a radical difference. The fundamental principle of the riparian system is that of equality - equality among the riparian proprietors, not necessarily to equal amounts of water, but in the right to make what, for them respectively and under all circumstances, is a reasonable use of the waters. The cardinal principle of the priority
system on the other hand is discrimination – discrimination in favour of the oldest user as he is called appropriator.\(^{(27)}\)

B) "In Connecticut Vs. Massachusetts, the Supreme Court said: Such disputes between States are to be settled on the basis of equality of right. But this is not to say that there must be an equal division of the waters of an inter-State stream among the States through which it flows. It means that the principle of right and equity shall be applied having regard to the equal level or planes on which all the States stand in point of power and right under our constitutional system."\(^{(28)}\)

The doctrine of prior appropriation is an ancient doctrine and is no longer the modern law of water courses. In Japan, South America and in most of the European States, the riparian system based upon the equitable distribution of waters, is in force. Hence the current thinking in all the advanced countries tends to accept the riparian law in preference to the prior appropriation law.

2) Regarding the second contention of Tamil Nadu, it may be said that the objection of Tamil Nadu Government
to the construction of new reservoirs on the scheduled rivers is based upon 1892 Agreement. Its objection to the construction of a reservoir on the Narangi is based upon the rights of lower riparian. But the Government of Tamil Nadu has constructed reservoirs on the Amaravati and Bhavani rivers. The capacity of the reservoirs constructed by the Government of Karnataka is within the 60 percent off set capacity permitted under Clause XIV of the 1924 Agreement. Thus Karnataka is within its rights and it has not exceeded the limits. Under Clause XI, the Agreement will be open for reconsideration after the expiry of 50 years. The Agreement expired on February 18, 1974. So the Agreement will have to be reexamined afresh and modified on the basis of mutually agreed principles. The Government of Karnataka commenced irrigation works across the Hemawathi, Kabini and Narangi rivers some years back. But the projects were not cleared by the Centre since Tamil Nadu went on opposing such clearance.

**Efforts for solution of the Cauvery Problem**

In a bid to find solution, the Central Government discussed with the Chief Ministers of all the States concerned on a number of occasions. At the conference
of the Chief Ministers of Karnataka, Kerala and Tamil Nadu, on May 31, 1972, it was agreed that waters should not be impounded or utilised beyond the then existing limits for a period of six months. It was also resolved at the conference that: "The Centre might appoint a Fact-Finding Committee consisting of engineers, retired judges and if necessary, agricultural experts to collect all the relevant data pertaining to the Cauvery waters, its utilisation, irrigation development and practices together with projects both existing, under construction and proposed in the basin."(29)

Accordingly, in pursuance of the consensus reached at the Inter-State Conference of Chief Ministers, the Central Government appointed a four-member Fact-Finding Committee on June 13, 1972 to collect data on the Cauvery waters. The members of the committee were Mr. P.R. Ahuja, Joint Secretary Union Ministry of Irrigation and Power, Mr. Jatindra Singh, retired Chief Engineer, Punjab, Dr. J.S. Patel, retired Agricultural Commissioner, Government of India and Mr. Justice B.B. Bal.

The terms of reference of the committee were:

A) To collect all the connected data pertaining
to the Cauvery waters, its utilisation at different points of time and on projects those existing and under construction and contemplation.

B) To examine the adequacy of the present supplies or excessive use of water for irrigation purposes.

C) To collect relevant data on the use of the Cauvery waters in different States and other features pertaining to cultivated areas, existing and proposed uses of domestic and industrial water supply, hydro-electric power generation in the basin, navigation and salinity control. (30)

The Fact-Finding Committee submitted its report to the Union Irrigation Ministry on December 15, 1972. The report of the committee, running into 150 pages, gives exhaustive information about land and climatic conditions, water resources and development of irrigation facilities in the 87,144 square kilometre Cauvery basin. It has also reproduced the case and the claims of three States on the waters of the Cauvery and its tributaries. The data supplied by the three State Governments run into 20 volumes. The committee estimated (31) that the average volume of flow in the river would be 20,956.83 million
cubic metres. But the riparian States in the Cauvery basin - Kerala, Karnataka and Tamil Nadu had proposed a total utilisation of 35,692,83 million cubic metres of waters for their projects including those existing at present. A meeting of the three Chief Ministers of the three States was held on April 29, 1973 at the instance of the then Union Minister for Irrigation and Power, Dr. K. L. Rao. The Chief Ministers decided: "The committee should go afresh into the actual utilisation of the Cauvery waters by the three States. They requested the Committee to furnish clarifications on some points after such verification as they found necessary." (33)

But the Chief Ministers arrived at "general consensus" on the total yield of the Cauvery waters at 740,000 million cubic metres as reported by the Fact-Finding Committee. The Committee submitted its final report on August 14, 1973. This was discussed by the Chief Ministers at a meeting held on 9th and 10th October 1973. It was agreed at the meeting: "The Centre should set up a team headed by Additional Secretary of the Union Irrigation Ministry and with two experts to assess the surplus waters available in the basin, by the application of better water management techniques, and other water sources available in the valley." (34)
Mr. O.C. Patel, Additional Secretary in the Union Ministry of Irrigation and Power who carried out the study of utilisation of water resources, submitted his report in November 1973. When the meeting of the Chief Ministers was held in Madras on June 27, 1974 under the Chairmanship of K.C. Pant, the then Union Minister for Irrigation, the measures suggested by the study team for economising the use of Cauvery waters were discussed. The following measures were recommended by the Study Team:

"(i) Improvements and modernisation of the irrigation system (lining of canals, command area, development works);

ii) Better water management and control;

iii) Diversification of cropping patterns;

iv) Replacement of surface water by ground water;

v) Integrated operation of reservoirs;

vi) Scientific water requirement of crops."

Another meeting of the Chief Ministers was held on November 29 and 30, 1974 under the Chairmanship of Mr. Jagjivan Ram, the then Union Minister for Irrigation and Agriculture. A draft Agreement was prepared by the
officers of the Government of India. It had provided for the setting up of a Cauvery Valley Authority. Though the Chief Ministers agreed in principle about the creation of the Cauvery Valley Authority, the details regarding its powers, composition etc, had to be worked out. The talks among the Chief Ministers on Cauvery were based on the four points:

"i) Of guaranteeing the waters to the established ayakut.

ii) Modernising the irrigation system to economise the use of waters.

iii) Utilisation of the waters thus saved by the three States concerned and

iv) Constitution of Cauvery Valley Authority composed of Chief Engineers of the three States, with a Central Official as Chairman to supervise implementation of these suggestions."\(^{36}\)

The Chief Ministers of Karnataka, Kerala and Tamil Nadu met again for another round of talks on February 15 and 16, 1975 under the Chairmanship of the then Union Agriculture and Irrigation Minister, Mr. Jagjivan Ram, in an attempt to find a solution to the long standing
dispute over the Cauvery waters. The meeting had before it a draft Agreement for discussion. The draft had taken into account the present utilisation of waters by the States as well as their future use. The Centre felt that by modernisation of the existing irrigation systems and co-ordinated operation of reservoirs by Tamil Nadu and Karnataka, about 100 to 125 T.M.C. of water would be available for reallocation among the States. The total availability in the Cauvery for irrigation had been assessed at about 700 T.M.C. The draft had envisaged the setting up of a Cauvery Valley Authority to ensure economic utilisation of waters. Despite a marathon effort for two days spread over 15 hours, no agreement could be reached on a draft. "The talks got bogged down on the issue of the quantum of waters to be saved by states and their reallocation for further development of irrigation." (36)

The Government of Karnataka has prepared a Master Plan for equitable use of waters in the State to facilitate a settlement of the dispute without hurting the present and future needs of all States in the Cauvery basin. The following are the highlights of the Master Plan:

"Based mainly on the data and statistics supplied
by the basin States to the Cauvery Fact-Finding Committee, the plan, when fully implemented, would double the irrigated cropped area in the basin from 1.57 million hectares in Karnataka, 1.8 lakh hectares in Kerala and 17.3 lakh hectares in Tamil Nadu totalling 31.3 lakh hectares in the basin as a whole. The plan has been prepared by the State Government to ensure the optimum use of the river waters as envisaged in the Ex-Prime Minister's (Mrs. Indira Gandhi) 20-point economic programmes. Recently a five-member committee headed by Mr. E. C. Saldhana, member, Central Water Commission, has been set up by the Centre to determine the manner of sharing the available waters of the Cauvery during the lean years among the States of Karnataka, Kerala and Tamil Nadu.

Krishna and Godavari Rivers

The basins of the two rivers cover about 221000 square miles, more than one-sixth of the entire area of India. Taken together, the two basins have a maximum width and a maximum length. Lying in the north of the Deccan plateau, the two basins include most of Andhra Pradesh, Maharashtra, Karnataka, parts of Madhya Pradesh and Orissa. (See Basin Map No.10).
Large parts of the Krishna and Godavari were, until 1948, under the management and control of princes, jagirdars and zamindars. The report of the Krishna-Godavari Commission popularly known as Gulhati Commission (Summary and Principal Recommendation) observes: "The portion of the two basins, now in Andhra Pradesh, was prior to Independence, under the control of the former Madras Presidency, the erstwhile Hyderabad State, a former princely State and a number of jagirdars; that in Madhya Pradesh under the former Central Provinces and the erstwhile Bastar State. The areas now in Maharashtra formed parts of the former Bombay Presidency, the former Central Provinces, the erstwhile Hyderabad State and a number of nowdefunct princely States. Likewise, the part of the two basins now in Karnataka was then distributed between the former Madras Presidency, the erstwhile Hyderabad State, the former Bombay Presidency, the former Mysore State and some defunct princely States. The areas in Orissa were largely in the erstwhile Kalahandi State and in the now defunct Jeypore estate."(39) As a result of the reorganisation of States on 1st November 1956, there was the political distribution of the drainage basins. In the light of reorganised boundaries of the States, parts of Krishna, and Godavari basins came to lie
in Karnataka and naturally the problem of allocation of waters of these inter-State rivers cropped up before the Government of Karnataka. The following account depicts the struggle of Karnataka in getting fair share in the allocation of the waters of these two rivers.

Description of Krishna Basin

The River Krishna rises in the Western Ghats, at an altitude of 4385 feet, just north of Mahabaleshwar, about 40 miles from the Arabian Sea and flows for a length of about 870 miles through Maharashtra, Karnataka and Andhra Pradesh. The river and its tributaries have a drainage area of about 1,00,000 square miles distributed as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Drainage Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maharashtra</td>
<td>27,000 sq. mi.</td>
</tr>
<tr>
<td>Karnataka</td>
<td>44,000 sq. mi.</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>25,000 sq. mi.</td>
</tr>
</tbody>
</table>

The extent of Krishna basin in Karnataka is of the order of 44,000 square miles. The total area of Karnataka State is 72,000 square miles. Therefore as much as 60 percent of the State lies in the Krishna basin. This territory depends entirely on the waters of Krishna for its sustenance. The districts contributing to the Krishna
basin of Karnataka State are: 1) Belgaum; 2) Bijapur; 
3) Bidar; 4) Gulbarga; 5) Raichur; 6) Dharwar; 7) Bellary; 
8) Chitradurga; 9) Shimoga; 10) Tumkur; 11) Hassan; 
12) Chickmaglur; 13) North Kanara and 14) South Kanara.

Tamil Nadu in South India has 36 percent of 
irrigation area, Andhra Pradesh has 26 percent, Karnataka 
has only 5.5 percent while Maharashtra has about 8 to 9 
percent. Karnataka has possibly the least irrigated area 
of all the States. Irrigation has not at all developed 
even though mighty rivers like Cauvery, Godavari, Krishna 
and the equally big tributaries of the last river viz; 
Tungabhadra, Malaprabha, Ghatsprabha and Sheema flow 
through Karnataka. This was due to the fact that there 
was no common Government catering to the needs of these 
various parts which have come together to form Karnataka 
State and which were comparatively smaller areas in the 
original States of Madras, Bombay and Hyderabad. Though 
the bulk of the catchment area is in Karnataka, very 
little of water of the Krishna basin is now harnessed 
for the needy areas in Karnataka. The northern districts 
of Karnataka like Gulbarga, Raichur, Bidar and Bellary 
are not having irrigation facilities. They form the 
second driest region in India next only to the Thar
Desert. The only panacea to eradicate the scourge of famine and scarcity in these districts is to provide major irrigation schemes, on the Krishna and its tributaries traversing those districts.

Description of Godavari Basin

The Godavari River flows across the Deccan plateau from the Western Ghats to the Eastern Ghats. It rises in the Nashik District of Maharashtra, about 50 miles from the shore of the Arabian Sea, at an elevation of 3000 feet. After flowing for about 910 miles in a south-easterly direction, through Maharashtra and Andhra Pradesh, Godavari falls into the Bay of Bengal, about 50 miles below Rajahmundry. The Godavari and its tributaries have a drainage area of about 121,000 square miles, distributed as follows: (41)

<table>
<thead>
<tr>
<th>State</th>
<th>Area (square miles)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maharashtra</td>
<td>59,000</td>
</tr>
<tr>
<td>Karnataka</td>
<td>2,000</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>25,000</td>
</tr>
<tr>
<td>Orissa</td>
<td>7,000</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>28,000</td>
</tr>
</tbody>
</table>

Karnataka had no share under the 1951 Memorandum
of Agreement in regarding to the sharing of Godavari waters. But consequent to the States' Reorganisation Act of 1956, part of the former Bidar district of Ex-Hyderabad State now forms part of Karnataka State. Both the Karanja and Manjira rivers of the basin flow in Bidar District.

1951 Allocation of Krishna and Godavari Waters

The then Deputy Chairman of the Planning Commission, Mr. V. T. Krishnamachari, on 8th May 1951, intimated to the Chief Ministers of the basin States of Krishna and Godavari rivers that the Planning Commission had decided to hold a Conference to decide on the inclusion of irrigation and power schemes in the First Five Year Plan. The Conference was held in the office of the Planning Commission with representatives of Bombay, Madras, Hyderabad, Madhya Pradesh and Old Mysore Government - "to discuss the utilisation of supplies in the Krishna and Godavari river basins so that an assessment could be made of the relative merits of the projects proposed for inclusion in the second part of the First Five-Year Plan." \(^{(42)}\) A note prepared by the Central Water and Power Commission was the basis of discussion. The note had listed the projects in different States - under
The engineers met to discuss the distribution of waters in the Krishna and Godavari Basins and arrived at a tentative set of proportions. The Conference reassembled on 28th July and considered the proposals made by the engineers regarding Godavari. The engineers were requested to prepare a Memorandum of Agreement. The Conference met again and approved the Memorandum of Agreement. According to the Memorandum, the dependable annual flow in the Krishna basin, based on the recorded gaugings as at the head of the delta at Vijayawada was taken as 1715 T.M.C. feet and allocations were made to different States, on an annual basis, as follows:

<table>
<thead>
<tr>
<th>States</th>
<th>Existing utilisation plus supplies required for project under construction</th>
<th>Allocation of surplus T.M.C.</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Bombay</td>
<td>176</td>
<td>240</td>
<td>24</td>
</tr>
<tr>
<td>2) Hyderabad</td>
<td>180</td>
<td>280</td>
<td>28</td>
</tr>
<tr>
<td>3) Mysore</td>
<td>98.5</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>4) Madras</td>
<td>290</td>
<td>470</td>
<td>47</td>
</tr>
<tr>
<td>Total</td>
<td>744.5</td>
<td>1000</td>
<td></td>
</tr>
</tbody>
</table>
Similarly, the dependable annual flow, in the Godavari basin, based on the recorded gaugings at the head of the delta at Dowlaishwarum Anicut, was taken as 2500 T.M.C. and allocations were made to different States on an annual basis as follows:

<table>
<thead>
<tr>
<th>States</th>
<th>Existing utilisation plus supplies required for project under construction</th>
<th>Allocation of surplus T.M.C.</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bombay</td>
<td>57</td>
<td>57</td>
<td>3</td>
</tr>
<tr>
<td>Hyderabad</td>
<td>208</td>
<td>494</td>
<td>26</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>30</td>
<td>456</td>
<td>24</td>
</tr>
<tr>
<td>Madras</td>
<td>300</td>
<td>893</td>
<td>47</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>595</strong></td>
<td><strong>1900</strong></td>
<td></td>
</tr>
</tbody>
</table>

The States of Madras, Bombay, Hyderabad and Madhya Pradesh ratified the Agreement. It may be noted that Orissa, then and now lying within the Godavari basin, was not represented at the Conference nor did the Central Water and Power Commission note, which formed the basis of the discussions, made any mention of Orissa or its requirement of water from the Godavari River system.
Mysore did not communicate its ratification. Shri K.C. Reddy, the then Chief Minister of Old Mysore attended the Conference under the impression that the object of the Conference was to select schemes for inclusion in the plan. Hence he was not accompanied by any technical staff. The final allocation of waters of the two rivers was not the subject matter on the agenda for discussion at the Conference. The Government of Mysore suggested a fresh Inter-State Conference to consider the matter de novo. Shri K. Hanumanthaiah, the then Chief Minister of Old Mysore in his letter dated 5th January 1953 addressed to the Planning Commission, wrote to the following effect:

"The Government of Mysore feel that the tentative discussions at the Conference in July 1951 cannot be regarded as a proper basis for finalising an Agreement amongst the States concerned for the sharing of the waters and the subject should be considered further in the light of all the factors which have since come up for consideration, and the fuller information since made available, with regard to the requirements of these waters. I would, therefore, suggest that if you agree, the Planning Commission may convene a further
Conference of the representatives of the several State Governments, to review the discussions of the Conference held in July 1951, examine the position further and to reach final conclusions on the sharing of the waters. If the date of the Conference is intimated, the names of the representatives from Mysore will be furnished to you. The Government of Old Mysore disputed the validity of the so-called 1951 Memorandum of Agreement and its binding nature. The main grounds on which Mysore took the stand in respect of the 1951 Memorandum of Agreement are:

A) Conference called in 1951 had not been called for the purpose of considering the shares of the participating States in the Krishna-Godavari River waters. It had been called to decide upon the projects which were to be included in the First Five Year Plan. Hence, the so-called allocation was beyond the competence of the Conference.

B) The States participating in the 1951 Conference had been expressly asked to ratify the Agreement at the Conference. The State of Mysore did not ratify the Agreement as in its opinion, the document was not legal and its requirements were not properly provided for.
The Memorandum of Agreement being a composite instrument between all the States failed when one of the States did not ratify it. Besides, the State of Orissa, which is one of the parties interested in the waters as a riparian State, did not participate in the said Conference and thereby the Agreement was vitiated. Thus, the Memorandum of Agreement has not matured into a lawful and binding Agreement on the concerned States.

C) The Memorandum cannot be regarded as an award since the question of allocation was never referred to a Tribunal or any other body for adjudication as required by law. The Planning Commission which issued the Memorandum is only an advisory body without any powers to issue an award.

D) The document cannot be regarded as a contract since it is not executed by any competent authority as laid down by Article 299 of the Constitution.

E) The Memorandum has not been drawn up after giving an opportunity to the riparian population to express their views and therefore allocations made ex parte by some parties are not valid.
F) Inflated, extra-basin and over-lapping claims made, by Madras have been accepted without scrutiny and without reference to the needs and rights of other States and as such, any Agreement reached on such basis is bad in law, and cannot be sustained. The figures mentioned therein have no reference either to the legal rights to the States nor to their rights lawfully adjudicated upon by any Tribunal or Authority.

G) The allocations made in the 1951 Memorandum, though intended to be for certain projects are not based on any principles of law or equity. Such mass allocations without any rational basis are unknown to law and hence are not sustainable.

H) Many of the major projects in the Fx-Madras State have been substituted by new ones constituting a major breach in the implementation of the so-called Agreement.

I) This Government has been demanding a de novo consideration of the question of allocating the waters on just and equitable principles. In order to protect its just rights and share in the equitable distribution
of waters, this Government has been constantly and frequently demanding that a break should be put on Andhra's project and limit them to its probable legitimate share. This Government objects to the Nagarjunasagar Project for the following reasons:

1) The said project is to a large extent outside the Krishna basin and is therefore not entitled to the use of Krishna waters.

2) It caters for areas which were originally intended to be served by Ramapdasagar Right Bank Channel, resulting in non-utilisation of the surplus Godavari waters on the one hand and over-drawal of Krishna waters at the cost of the upper States on the other.

3) It was not a project considered for Krishna water allocation 1951 and its present scope is much more than what the Andhra State might legitimately claim from the lower Krishna basin.

4) In order to raise the production of power at Nagarjunasagar to 1 lakh K.W. as much as 60 T.M.C. feet of water in all would be wasted into the Bay of Bengal
when millions of acres in the arid and semi-arid regions of the upper basin are thirsting for water for agricultural purpose. The so-called 1951 Award prevents Bombay from diverting the balance waters of about 40 T.K.C. feet at Koyna for the purpose of irrigation even though such use would have resulted in generation of about 3 lakhs K.W. of perennial power.

5) The Srisailam project would use the waters going to NagarjunaSagar for hydro-electric power generation and also export waters to Pennar basin, in addition to evaporating about 33 T.K.C. feet of water. The scheme of Andhra Pradesh would take away most of the waters of the Krishna basin to areas outside the basin, whereas the Upper Krishna basin which is famine-stricken and very extensive, mostly lying in Maharashtra and Karnataka, would be left barren and dry for all time to come and the Pochampad project on the Godawari would deprive the Bidar District of Karnataka State of its legitimate share of waters for its development.

From the facts stated above, it is clear that the dispute cannot be settled by negotiation and it is therefore requested that Central Government may be
pleased to constitute a water dispute Tribunal for the adjudication of the said dispute by Section 4 of the Inter-State Water Dispute Act 1956.*{(46)}

Thus the futile correspondence was going on between the Government of Karnataka and the Government of India. The Memorandum of Agreement remained unratified by ex-Mysore. As a consequence of the reorganisation of the States, the Agreement of 1951 needed to be reviewed and modified taking into account the new political authorities which exercised control over the river. Hence the Central Water and Power Commission requested the reorganised States in May 1957 to take steps for an early revision of the 1951 Agreement. Nothing was done by the States in this direction. The Central Water and Power Commission formulated some proposals in February 1959 and sent them to the State Governments. But the proposals were not accepted by any of the States. Thereupon, the Central Water and Power Commission revised its earlier proposals and circulated them afresh to the States in December 1959. But all the States desired a de novo consideration of the issue. An Inter-State Conference was held in September 1960 to solve the deadlock. No Agreement could be reached. "There was a wide divergence in the
position taken by different States. Whereas Andhra Pradesh held to the Agreement of 1951, other States wanted a de novo consideration of the entire issue. 

Hence the Government of India, on 1st May 1961, set up a Commission to review the position in respect of availability of supplies in the Krishna and Godavari rivers with a view to determining the extent to which further demands on these waters could be met.

The Views of Krishna and Godavari Commission

The Commission was established under the Chairmanship of Mr. N.D. Gulhati, and it is popularly known as the Gulhati Commission. The Commission submitted its report in August 1962. It was a comprehensive document bringing together all the engineering and other data relevant to the development of the waters of the Krishna and Godavari river basins. The Commission made several recommendations. The following are the most important recommendations.

A) "The Commission strongly recommends, as a matter of first urgency, the establishment on a permanent basis and on scientific lines, of daily discharge observations at 38 sites of the Krishna River System and 38 sites on the Godavari River System. The river
flow data to be obtained at these sites are essential for the preparation of individual projects, for the preparation of an integrated basin-wise plan, for the subsequent operation of such a plan and the Regulation, to best advantage, of the available river waters in any year."(49)

B) "It is important that regular observations should be made by all State Governments of the position of the ground waters and their fluctuations during the year. The methods to be adopted would vary in different parts according to local conditions. This information is necessary to maintain a close watch on the behaviour of ground waters, particularly in view of the large scale new developments undertaken and contemplated, and for the due exploitation of ground waters, separately or in conjunction with canals."(50)

C) "The Commission recommends that the State Governments concerned should all agree to tune their policy regarding irrigation and the administration and management of irrigation works to the requirements of optimum development of a scarce and expensive natural resource."(51)
D) "The Commission recommends that inter-State body, a River Board or by whatever name called, should be established without any delay, for bringing about a co-operative approach and establishing the necessary co-ordination in the planning and operation of various developments in the two river basins. The integrated operation of all projects, which is indispensable, would not be possible without such a co-ordinating body."\(^{(52)}\)

The Report of the Commission was circulated in September 1962 to all the State Governments. The then Union Minister for Irrigation and Power, Mr. Hafiz Mohammed Ibrahim laid a statement on the table of the Lok Sabha on 23rd March 1963 after consultation with the concerned States. It was stated therein: "According to the advice available to the Ministry, the Agreement of 1951 was legally wholly ineffective and unenforceable and that it must be treated as having become void; if it was not void at least partially ab initio."\(^{(53)}\)

Accepting the recommendations of the Commission, the Union Minister came to the conclusion that the inter-State controversy should be settled in the light of the principles mentioned below:
A) Comprehensive river flow data should be collected over a number of years and analysed continuously;

B) Investigations should be carried out to prepare the project report on the supplies that could be diverted from the Godavari into the Krishna basin;

Not agreeing with the recommendations of the Commission the Union Minister stated:

C) Pending (A) and (B) above, projects already started and those contemplated in the immediate future should go forward with necessary safe margin;

Again agreeing with the Commission, the Union Minister continued:

D) State Governments should tune their future policy regarding irrigation and administration and management of irrigation works to the requirements of the optimum use of a scarce natural resource; and

X) Immediate steps should be taken to prepare comprehensive master Plan for the entire Krishna and Godavari basins. For this purpose, a Central Authority like a River Board under the River Boards Act of 1956 should be established.*(54)
The above mentioned scheme of things, as outlined by the Union Minister in the statement was not accepted by any one of the States concerned. Several meetings between the Union Minister for Irrigation and Power and the Ministers of the concerned States were held to bring about settlement. But there was no effect. The Government of Maharashtra and Karnataka requested in 1963 for the appointment of a Tribunal. The Government of Andhra Pradesh also asked in 1968 for adjudication of the issues. Ultimately, a Tribunal was set up in April 1969 under the Inter-State Water Disputes Act to adjudicate on the issues of Krishna and Godavari rivers. It was headed by Mr. Justice R.S. Bachawat, former Judge of the Supreme Court in November 1973. The Tribunal, in its unanimous award/directed:

"The waters of the Krishna River be allocated to the three States of Maharashtra, Karnataka and Andhra Pradesh for their beneficial use at the rate of 565,695 and 800 T.M.C.F.T.S. respectively. The Tribunal determined that the 75 per cent dependable flow in the Krishna upto Vijayawada is 2,060 T.M.C.F.T. and it considered that the entire quantum was available for distribution among the three States. The tribunal found that the Krishna River
flowed in the area of 43,734 square miles extending from Belgaum to Tumkur in the State of Karnataka and whereas 26,805 square miles in Maharashtra and 29,441 in Andhra Pradesh. The award of Mr. Justice Bachawat allocating the Krishna waters among the three States has clearly gone against the interest of Karnataka. Holding the upper riparian rights, Karnataka had pegged its claim to at least 1,050 T.C.F.T. The Tribunal recognised the claims of Karnataka for more allocation when it conceded the fact that the basin area lying within the territories of the State of Karnataka is the largest and at least \# times more than the basin areas lying within the territories of either Maharashtra or Andhra Pradesh. It has been the contention of Karnataka that in a dispute of this type, the river basin provides a definite basis for comparing the respective needs for the determination of the respective shares and utilisation within the basin. The allocations made by the Tribunal were therefore found to be arbitrary. The award of the Tribunal did a great injustice to Karnataka whose riparian interests had been sandwiched between two powerful States. The Karnataka Government raised in the Supreme Court certain points regarding the award though it is barred under the Inter-State River Waters Dispute
Act 1956. But the petition filed by Karnataka before the Supreme Court praying for special leave against the order of the Tribunal was unfortunately dismissed. The Karnataka Government, which was upset over the patently unjust verdict of the Tribunal and its unhelpful attitude made a reference under Section 5(3) of the Inter-State Water Disputes Act 1956 seeking certain clarifications. Before the Tribunal, Maharashtra was represented by its Advocate-General Mr. H.M. Seervai, Andhra Pradesh by Mr. P. Ramachandra Reddy, Advocate-General and Karnataka by Mr. R. N. Byra Reddy, Advocate-General. The proceedings of the Tribunal commenced on 19th August 1974. But Karnataka walked out of the proceedings of the Tribunal alleging that the "State was not likely to get a fair, impartial and just decision in the dispute at the hands of the tribunal." (56) Karnataka Advocate-General, Mr. R. N. Byra Reddy made a statement before the Tribunal before walking out of Tribunal on August 19, 1974. The following is the summary of the text of the statement:

"The State of Karnataka, on a careful and earnest consideration of all the facts and circumstances of the case including what has transpired so far before this Honourable Tribunal, is constrained to reach the conclusion that the State cannot get a fair, impartial and just decision of the dispute at the hands of this Tribunal..."
and as such has decided with great regret to withdraw itself from these proceedings and does not propose to take any further part in the proceedings before this Tribunal. The State of Karnataka, while making the above submission wishes to place on record some of the facts and circumstances in brief which have compelled it most reluctantly to resort to the above stated course of action. The matter referred to this Tribunal for adjudication is for the settlement of the dispute between the riparian States in respect of all waters (75 per cent dependable and surpluses) flowing in the river Krishna and for equitable allocation thereof based on the rights of the riparian States for the use of the waters of river Krishna. It is the contention for the State of Karnataka that the report and the order forwarded by this Tribunal to the Central Government purport to adjudicate upon allocating only the waters at 75 per cent dependability determined to be 2,060 T.H.C.F.T. and some of the return flows therefrom. In this reference, the State of Karnataka sought for a rectification of the error flowing from partial adjudication and allocation of waters, giving at the same time liberty to the State of Andhra Pradesh to use all remaining waters to the grave prejudice of Karnataka. But this Tribunal has clearly indicated
its mind that no such correction is possible. The contention for Karnataka has been that the equitable apportionment of waters should be determined on the basis of the in-basin factors which have in detail been set out and on the basis of such in-basin factors, the State of Karnataka is entitled to a larger share of waters than what is now allocated to it. It is further the contention for Karnataka that the allocation of available waters between Karnataka and Maharashtra is discriminatory resulting in grave prejudice to Karnataka, in as much as the factors on the basis of which Maharashtra has been allocated waters has not found favour with the Tribunal in the matter of allocating waters to Karnataka, though the circumstances were either identical or more pressing in the case of Karnataka. The same is the grievance of Karnataka in the matter of allocation of balance waters to the extent of nearly 250-300 "A.C.I.R.T. The clear indication which this has given in relation to this grievance of Karnataka is that no alteration of that decision is conceivable. It is the contention for Karnataka that every one of the problems purporting to be insoluble in the judgement of this Tribunal is attempted to be solved or resolved at the cost of Karnataka and the same has resulted in grave injustice to Karnataka and has jeopardised its interest.”(57)
The Karnataka State Legislature held a special debate in August 1974 on the award of the Krishna River Waters Tribunal in the context of the developments which forced the representatives of the State on the Tribunal to stage a protest walk out. The Karnataka Legislative Assembly, on 22-8-1974, unanimously adopted a resolution supporting the Advocate-General's action in withdrawing from the proceedings of the Krishna Water Tribunal on the ground that the Tribunal's attitude betrayed partiality. Similarly the Karnataka Legislative Council, in its resolution on 26-8-1974, unanimously urged the Union Government not to publish the unjust and partial report of the Krishna Water Tribunal in the Gazette. The House approved the stand taken by the Advocate-General in withdrawing from further proceedings of the Tribunal. Even the opposition members in both the houses of the legislature called for a vigorous political approach to the Krishna Water Dispute, creating a constitutional crisis if need be to secure justice to Karnataka and assured the Government of their unconditional support to a concerted battle for the State's share.

The Government of India persuaded the Government
of Karnataka to go back to the Tribunal and seek any clarifications. With great reluctance, the Government of Karnataka appeared once again before the Tribunal and represented its case. The Tribunal forwarded its verdict containing the clarifications to the Government of India. Mr. Jagjivan Ram, the then Union Minister for Agriculture and Irrigation announced the final decisions of the Krishna Water Tribunal at a press conference on 31-5-1976. He said: "The schemes drawn up by the three States concerned already for use of the river waters would have to be reviewed and where necessary revised to be in conformity with the decisions of the Tribunal. The Tribunal envisages the constitution of an Inter-State Administrative Authority to be called the Krishna Valley Authority for fuller and better utilisation of the river waters. It has directed that its decisions may be reviewed or revised by a competent authority anytime after May 31, 2,000 A.D. Under the Tribunal's award, Karnataka has been allotted not more than 700 T.H.C.P.T. The remaining water will go to Andhra Pradesh subject to the condition that it shall not acquire any right whatsoever to use, nor be deemed to have been allocated water in excess of 800 T.H.C.P.T. in any water year from June to May. He further said that with the decisions
now given by the Tribunal for implementation by the State Government concerned, a major river dispute had been solved. The Tribunal has made its allocations to the three States for their beneficial use, for domestic, municipal, irrigation and industrial purposes as well as for power production, navigation and wildlife protection."(60)

Regarding the waters of Godavari, the Tribunal has not yet decided about the allocations. But a temporary Agreement was reached between Karnataka and Andhra Pradesh on 18-9-1976 on a minimum programme to ensure the utilisation of Godavari river waters pending a final decision. The Agreement pertains to the utilisation of the waters of river Manjra, a tributary of the Godavari. "According to terms of agreement, Andhra Pradesh will agree for grant of technical clearance to the Karanja and Chilkinala irrigation projects of Karnataka in the Manjra basin, sub-basin of the Godavari. Similarly, Karnataka will agree for the execution of Singur project in the Manjra basin by Andhra Pradesh to meet the immediate drinking water needs of Hyderabad City."(61)

The idea of bilateral agreements between the riparian States was mooted by the Government of India some time
ago as the final settlement of the dispute by the Tribunal is likely to take three or four years. The Government of India had suggested that these bilateral Agreements between the States could be worked out to mutual advantage and without prejudice to the interests of the respective States. The issues pertaining to the unsolved problems have been dealt with in the concluding chapter and suggestions have been made.
FOOT NOTES


2) Ibid., p. 341.

3) Ibid., p. 342.

4) Ibid., p. 341.

5) Ibid., p. 341.

6) Ibid., p. 341.

7) Ibid., p. 341.


15) N.D. Gulhati, Development of Inter-State Rivers - Law and Practice in India, printed at the Central Electric Press and published by Allied Publisher, New Delhi, 1972, p. 113.


18) Text of the 1892 Agreement, printed at the Mysore Residency Press, Bangalore and published by the Manager of Publication, New Delhi, 1892, p.5.


20) Ibid., p.6.


22) Ibid., p.121.

23) Text of 1924 Agreement, Annexure 1, printed at the Mysore Residency Press Bangalore and published by the Manager of Publications, New Delhi, 1924, p.4.


27) Ibid., p.28.

28) D. Devaraj Urs, Chief Minister of Karnataka, *The Text of the Statement on the Cauvery Water Dispute made in the Legislative Assembly*, published in the issue of Deccan Herald dated February 27, 1975, Bangalore, Col.2, p.10.


31) Ibid., Col.4, p.6.


34) Devaraj Urs, Chief Minister of Karnataka, The Text of the Statement on the Cauvery Water Dispute made in the Legislative assembly, published in the issue of Deccan Herald dated February 27, 1975, Bangalore, Col.2, p.10.


41) Ibid., p.203.

42) Ibid., p.188.

43) Ibid., p.190.

44) Ibid., p.205.


46) Ibid., Appendix XII - (1) Letter No. ENO 24 BRA 59 dated 29th January 1962 from the Secretary to Government, Mysore, Public Works and Electricity
Department, to the Secretary to the Government of India, Ministry of Irrigation and Power, New Delhi, pp. 222-224.


48) Ibid., p. 193.


50) Ibid., p. 7.
51) Ibid., p. 17.
52) Ibid., p. 19.


54) Ibid., p. 195.


